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HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE 1057th MEETING

Held at Headquarters, New York,
on Tuesday, 9 April 1991, at 10 a.m.

Chairman: Mr. POCAR

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Sri Lanka

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Sri Lanka (CCPR/C/42/Add.9)

1. At the invitation of the Chairman, Mr. de Silva (Sri Lanka) took a place at the Committee table.

2. The CHAIRMAN invited the Committee to begin consideration of the second periodic report of Sri Lanka. He reminded the Committee that the Sri Lankan Government had very recently submitted a written response to the list of issues, which would facilitate the discussion considerably.

3. Mr. de SILVA (Sri Lanka) said that as the list of issues had been so detailed, his Government had felt it best to respond in writing. He would in his opening statement refer to his Government's submission only briefly. He stood ready to answer any further questions members might have.

4. Firstly, however, he wished to provide some general background information. The Constitution of 1978, which guaranteed fundamental rights and provided judicial remedies for their protection, had recently been reviewed in the light of practical experience with its application. Certain changes to the Constitution were proposed which would enhance those rights. Those changes were contained in the proposed Seventeenth Amendment, which was currently under discussion in Parliament. The Constitution of Sri Lanka could be amended only by a two-thirds majority of the members of Parliament, which necessarily required the support of members of the opposition.

5. Sri Lanka was currently plagued by terrorist activities carried out by separatists in the northern and eastern provinces, and the violence had spread elsewhere in the country. To protect the law-abiding from such attacks, the Government had used the powers vested in it under the Terrorism (Temporary Provisions) Act and the Emergency Regulations. The Government was fully aware that such provisions represented a departure from the rights under the Covenant, but took the view that they did not exceed the derogations allowed under article 4 (1) of the Covenant. The terrorist emergency had abated somewhat, but its extent could be appreciated only by someone who had actually lived through it. There had been acts of violence and murder, not only against the security forces but against innocent civilians, prominent personalities, journalists, and even people such as bus drivers who had defied the terrorists' ban on travel to work. Only a skeleton civil administration was left in place in the northern and eastern provinces, and political activity was at a virtual standstill. The Government was determined to return the situation to normal, and as soon as it did so, all of the special provisions would be repealed.

(Mr. de Silva, Sri Lanka)

6. The Covenant could not be directly invoked before the courts in Sri Lanka. Sri Lanka followed the legal principle that international law became part of domestic law only upon formal incorporation. However, the rights provided for under the Covenant were enshrined in the chapter of the Constitution dealing with fundamental rights. As all legislation enacted in Sri Lanka was required to conform with the constitutional provisions on fundamental rights, compliance with the Covenant was automatic.

7. When the 1978 Constitution had been introduced, provision was made for existing laws to continue in force, with those that were in conflict with the Constitution being modified, gradually following review by a Law Commission. Some of the laws which required change had been in force for centuries and it would be too traumatic to change them at a stroke.

8. Various concerns had been expressed with regard to the proposed Seventeenth Amendment. The first related to references to "ethnic group" rather than "race" in the context of discrimination. The Government of Sri Lanka considered the concept of "race" to be inappropriate in that context. All human beings were members of one race, but they were divided into different national and ethnic groups. Reservations had also been expressed with regard to the phrase "in a language which he appears to understand" in connection with the mandatory requirement to read an accused person his rights. While it had been said that the formulation "which he understands" might be preferable, he felt it legally dubious that one could prove that a detainee actually understood a language. All that was possible was to adduce circumstantial evidence that he appeared to understand it.

9. Concerns had also been expressed that the Emergency Regulations were in force without time-limit. Legally speaking, that was not correct. They were in force only for one month at a time, and had to be renewed, following approval by Parliament. Similarly, detention orders under the Emergency Regulations had to be renewed every month. That provision had been upheld by a decision of the Supreme Court.

10. There had been reservations with regard to the absence of specified time-limits for the commencement and conclusion of trials. Sri Lanka considered it an unfair interference with the independence of the judiciary to set such time-limits, considering it preferable to require cases to come to trial "within a reasonable period of time", and to leave it to the courts to determine what was "reasonable". While justice delayed might be justice denied, it was preferable to injustice expedited.

11. With regard to the concern expressed over the proposal to replace the phrase "executive or administrative action" by "state action" in article 126 of the Constitution, he said that it had been Sri Lanka's experience that the issue of whether a given activity of the State was an executive or administrative action had led to unending contention, whereas "state action" was a clear legal concept.

(Mr. de Silva, Sri Lanka)

12. Concerns had also been expressed over the provision that statements made by a suspect at the time of arrest would be admissible in court. While such admissibility was not at all uncommon in many jurisdictions, in the past it had been prohibited under Sri Lankan law, on the grounds that an arresting police officer might have used duress to extract a confession. It was now felt, however, that provided the suspect's lawyer was present, a statement made to the police at the time of arrest should be admissible in court. Such confessions would still be subject to control by the courts, and no statements made under duress would be admissible.

13. It had also been alleged that the proposed amendment to the Constitution sought to introduce the death penalty without due process of law. That was a totally inaccurate and very unfair misconstruction of the intention of the amendment. The death penalty could be imposed only for a very limited number of offences and only after a full trial. In the event of a sentence of death, there was a mandatory appellate review and mandatory consideration by the executive to determine whether or not the sentence should be carried out. Since 1977, there had been no executions in Sri Lanka, even though people had been sentenced to death.

14. The fear had also been expressed that the proposed amendment sought to do away with the presumption of innocence. That too was a misinterpretation of the intention. The proposed amendment placed the burden on the accused in certain circumstances to establish a fact which was within his special knowledge. It was not uncommon in various legal systems to require an accused person who wished to adduce in his defence a fact within his special knowledge to establish that fact, but the burden of proving guilt was never removed from the prosecution by such a provision.

15. Concern had also been expressed about the provision for making certain laws retroactive, but that provision had to be seen in the light of the very important proviso accompanying it, namely, that an action which had not been a criminal offence at the time it was committed could be criminalized retroactively only if it was recognized as a crime by the international community. A case in point was the hijacking of aircraft.

16. It was a misinterpretation of the intent of the proposed constitutional amendment to assert that Sri Lanka intended to place restrictions on religion, thought and conscience. On the contrary, article 10 of the Constitution, which was non-derogable, guaranteed freedom of religion, thought and conscience. What was intended in the proposed amendment was to place restrictions on the manifestations of various religions, which was a necessary provision to ensure harmony in any society whose members professed different religions. Article 18 (3) of the Covenant permitted such restrictions.

17. The concerns regarding restriction of the fundamental rights of members of the armed forces were also unfounded. A serviceman accused of a civilian crime would automatically enjoy the fundamental rights guaranteed under the

(Mr. de Silva, Sri Lanka)

Constitution. Military sanctions, up to and including a court martial, applied only to offences committed by a serviceman in his capacity as a member of the armed forces and in the performance of his official duties.

18. There had been concerns on the restrictions of fundamental rights under the Emergency Regulations. It had to be remembered that any emergency regulation had to be consistent with the Constitution and hence, automatically, with the Covenant. While any guaranteed right might be restricted by emergency regulations, such regulations themselves were governed by the Constitution.

19. His Government would welcome the views of the Committee on the proposed amendment as they might be helpful in the deliberations on it currently in progress in Parliament. He emphasized, however, that the various provisions of the proposed amendment had to be viewed in their proper context.

Constitutional and legal framework within which the Covenant is implemented, in particular during the state of emergency (articles 2 (2), 3 and 4 of the Covenant) (section I of the list of issues)

20. The CHAIRMAN read out section I of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) clarification of the status of the Covenant within the Sri Lankan legal system, in particular, how contradictions between domestic legislation and the Covenant, if any, were resolved; (b) examples, if any, of cases during the period under review where the provisions of the Covenant had been directly invoked before the courts; (c) information on the extent to which the provisions of article 155 of the Constitution relating to parliamentary control of the proclamation of a state of emergency had been effectively applied; (d) description of the impact of the state of emergency on the exercise of the rights guaranteed under the Covenant, in particular with regard to safeguards and remedies available to individuals; (e) clarification of the role of the Advisory Board mentioned in paragraph 13 of the report, and the statement in paragraph 14 that "only a handful" of the 600 applications for a writ of habeas corpus in 1989 had been of sufficient merit to require the intervention of the court; (f) details of the relationship between the courts and non-judicial bodies operating under the state of emergency such as the Advisory Board, the committees established to monitor the activities of the security forces and to probe into the arrest of students, and the Parliamentary Commissioner, and information on whether individuals who failed to obtain redress through such bodies could apply directly to the courts; (g) any other factors and difficulties affecting the implementation of the Covenant, and, in particular, the impact of the cultures and traditions of Sri Lanka on the implementation of human rights contained in the Covenant; and (h) information on the measures taken to promote public awareness of the provisions of the Covenant.

21. Mr. de SILVA (Sri Lanka) said that he had already dealt with section I (a) and (b), but would be happy to answer any supplementary questions put. With regard to section I (c), he said that the provisions of article 155 required that the declaration of a state of emergency had to be ratified by Parliament. Emergency regulations could override any laws of Sri Lanka except the Constitution itself, and there had been instances of such regulations being struck down on grounds of unconstitutionality.

22. With regard to section I (d), he explained that only the derogations permitted by the Covenant itself were permitted by emergency regulations. Safeguards with regard to writ of habeas corpus and the ability to challenge the validity of the regulations in a court of law, remain unimpaired.

23. With regard to section I (e), it was his assumption that the reasons for the very small number of applications for habeas corpus which had proved to have merit were twofold: in some cases the families of detainees were, he suspected, using habeas corpus on a speculative basis as a device by which to test the validity of the detention; in others, people sought, by filing a writ of habeas corpus, to have higher priority given to the processing of cases in which they had some interest.

24. He felt that he had already provided the information sought in section I (f) and (g), but was prepared to answer any additional questions members might wish to ask.

25. With regard to section I (h), he explained that materials providing information on the various human rights instruments had been distributed to the armed forces and the police, posters promoting those instruments had been prepared in the three languages used in Sri Lanka and displayed at places of maximum exposure to service personnel, seminars on human rights topics had been conducted for members of the armed forces and the police, and teaching about human rights had been made a part of the school curriculum.

26. Mr. MAVROMMATIS said he understood the difficulties Sri Lanka was facing; but it was perhaps in such difficult circumstances that the greatest vigilance was called for in the protection of human rights. He wondered whether the Committee could be given further clarification of the current situation with regard to Sri Lanka's derogations from the Covenant.

27. Mr. ANDO said that he, too, understood the difficulties Sri Lanka was currently facing. In connection with section I (f), he asked if specific examples of the effective functioning of the system established to monitor the activities of the security forces could be given to the Committee. The state of emergency still in effect in Sri Lanka entailed the imposition of restrictions on human rights which could be judged only on the basis of the criteria of reasonableness and the maintenance of minimum international standards. He would be grateful for a further clarification of the situation in Sri Lanka from that point of view.

28. Ms. CHANET said that it would be helpful to be given a more detailed and clearer statement of the extent to which the emergency legislation derogated from the Covenant. The same was true with respect to the anti-terrorism legislation; in that connection, she asked for clarification of the connection between terrorism and some of the activities listed in Sri Lanka's written reply to the Committee's questions as subject to penal sanctions under the Prevention of Terrorism (Temporary Provisions) Act, such as stealing from cooperatives and writing on walls.

29. The last sentence of paragraph 15 of the addendum to Sri Lanka's second periodic report (CCPR/C/42/Add.9) seemed to indicate that the proposed amendments to the Constitution would make possible the maintenance of a permanent state of emergency, a state of affairs that seemed incompatible with articles 9 and 14 of the Covenant. She wondered if any legal provision had been made for ensuring that the amended Constitution would remain compatible with the Covenant.

30. Mr. PRADO VALLEJO said it seemed from paragraphs 13 and 14 of the addendum to Sri Lanka's second report that although many citizens had resorted to the remedy of habeas corpus only a few had benefited from it, and that the remedy was not therefore functioning very effectively. It also seemed from the report that delays of up to two years could occur before action was taken on a writ of habeas corpus, a situation that seemed incompatible with the very purpose of the remedy. Moreover, it appeared from article 126, paragraph 2, of Sri Lanka's Constitution that a time-limit of one month had been established in which to apply for the remedy, and that such application could be made only in Colombo. That, too, seemed a limitation of the basic human right involved. He wondered if further clarification could be provided on those points.

31. He would also appreciate information on what remedy was available to citizens of Sri Lanka whose human rights had been violated by the Indian forces sent to the country, and what action had been taken by the Sri Lankan Government with respect to the complaints of disappearances as a result of actions undertaken by Indian troops.

32. Mr. SADI said that he still felt some concern with respect to the status of the Covenant under Sri Lankan law, particularly in view of the fact that, as the Committee had been informed, the Covenant could not be invoked directly in a court of law. He asked for further clarification of that point.

33. The Sri Lankan representative's statement that, although divergencies existed between his country's Constitution and the Covenant, the Sri Lankan Government was reluctant to take immediate action, also gave grounds for concern. He asked for further information about the nature of the problems the Government feared might arise if the Constitution was amended to bring it into conformity with the standards of the Covenant.

34. Mr. AGUILAR said that while the somewhat laconic report stated that most articles of the Covenant were incorporated into the Sri Lankan Constitution, the right to life was not incorporated in the form in which it existed in the Covenant, merely the right to life in respect of an arbitrary death penalty. Article 13 (4) (a) of the Seventeenth Amendment to the Constitution stated that every person had the inherent right to life, and that no person should be arbitrarily deprived of his life; Mr. de Silva had said that that could not be interpreted as a derogation from what already stood in the Constitution. In such cases there had to be a ruling from a competent court, and he requested more details of the procedure; in particular, he wondered whether the existing law in Sri Lanka was strict enough, and whether there were any exceptions to the handing down of a ruling by a competent court. Articles 13, 14 and 15 of the Constitution contained a series of rights that were laid down in the Covenant, but article 15 established exceptions, notably the reference in article 15 (11) of the Seventeenth Amendment to the Constitution, which stated that the exercise and operation of the fundamental rights declared and recognized by articles 12 (1), 13 and 14 should, in their application to the members of the armed forces, police force and other forces charged with the maintenance of public order, be subject to such restrictions as might be prescribed by law in the interests of the proper discharge of their duties and the maintenance of discipline among them; that amounted to a derogation from the right to life, which was contrary to article 4 of the Covenant.

35. There were a number of derogations for reasons of law. Mr. de Silva had stated that amendments to the Constitution required a two-thirds majority in Parliament, and he wished to know whether the series of laws referred to in article 15 of the Constitution, and the proposed article 15, were regarded as provisions amounting to derogations and whether they too were subject to a two-thirds majority requirement for adoption.

36. Referring to paragraph 1 of the report, he said that rather than analysing the provisions of the Covenant to see which of them were appropriate to Sri Lanka, Sri Lanka should be examining its own legislation in order to ensure that it was in conformity with the provisions of the Covenant.

37. His concern with regard to the Prevention of Terrorism (Temporary Provisions) Act was that such acts, despite being described as temporary, tended to remain in force for a long time, and the Committee had had dealings with a number of States parties where that had happened. One temporary provisions act in Sri Lanka had been in force since 1979, which was far too long.

38. Habeas corpus was a remedy which should have immediate effect anywhere in the country, and a delay of two years was too long. Also, there seemed to be a contradiction between paragraphs 4 and 14 of the report, with paragraph 4 stating that a large number of cases had been filed alleging that persons were being illegally detained in custody, many of which had been accepted, and paragraph 14 stating that in 1989 alone more than 600 people had made applications for the writ of habeas corpus, only a handful of which had been

(Mr. Aguilar)

proved to have been of sufficient merit. He wished to know how many applications there had been, and how many had been declared valid. He also asked whether it was a court of law which determined the grounds of reasonableness referred to in paragraph 4 upon which a detention order made by the Secretary to the Ministry of Defence was subject to review, and what criteria were used in that determination.

39. Mrs. HIGGINS said that the report did not meet the Committee's requirements in terms of format and level of detail. However, she welcomed Mr. de Silva's open and constructive attitude towards any proposals which the Committee might wish to make concerning the latest bill to amend the Constitution.

40. She was particularly anxious about the efficacy of the remedy of habeas corpus and the delays in processing applications. It was her understanding that it had fallen into disuse because lawyers who engaged in such work feared reprisals against them.

41. With regard to the Constitution and the scope of the emergency regulations, Mr. de Silva had stated that the emergency regulations had to be compatible with the Constitution, but since the Constitution itself permitted them she was experiencing some difficulty with what appeared to her to be a vicious circle and she requested elaboration of the point.

42. As for derogations, article 15 (1) of the proposed amendment to the Constitution referred to the exercise and operation of the fundamental rights declared and recognized by articles 12 (1) (a), 12 (2), 13 (1), 13 (2), 13 (5), 13 (6) and 14 (1) (d) should be subject only to such restrictions as might be prescribed by law in the interests of national security or of public order, and she wondered if that was the language of limitation, which, if it were, would run counter to the provisions of articles 2 and 9 of the Covenant. Article 14 of the Constitution, which corresponded to articles 18 and 22 of the Covenant, did provide for limitations, so it would be necessary to consider on a case-by-case basis which came within the limitation. If the reference was to emergencies rather than to limitations, then the language did not meet the threshold conditions for emergencies. She sought clarification of the matter.

43. She asked whether the fact that the notification of a state of emergency made in 1989 referred only to derogation from article 9 (2) of the Covenant meant that that derogation was the only one that existed, or whether it was in addition to the derogation from articles 9 (3) and 14 (3) (b) referred to in the 1984 notification; she also asked whether the internal emergency provisions entailed any further derogations.

44. Mr. MYULLERSON, noting that Mr. de Silva had referred to laws which had been in effect in Sri Lanka for centuries and which should be modified, asked which laws they were, in what ways they contradicted the provisions of the Covenant, and how those contradictions might be overcome. With regard to the right to self-determination, and its internal aspect in the Sri Lankan context, he wanted to know what the separatists' demands were - whether they wanted to break away completely from Sri Lanka, or whether they merely wanted a degree of autonomy in their own territories; he asked how the Sri Lankan Government envisaged the situation being resolved, for it clearly had a negative influence on the implementation of human rights in the country as a whole. He shared the concern expressed by other members of the Committee with regard to the delay in the habeas corpus procedure.

45. Mr. EL-SHAFEI, regretting that the report was short, welcomed the provision of written answers to the list of issues; it was, he said, the first time the Committee had received written answers, and it was a most welcome development. He also welcomed the fact that chapter III of the Constitution, referring to fundamental rights, borrowed much from the language of the Covenant. The Sri Lankan delegation had stated that, because the rights and freedoms of the Covenant were enshrined in the Constitution, there was no need to incorporate the Covenant into domestic law through a specific enactment, but it was never possible to devise a constitution which exactly matched the Covenant. For example, article 11 of the Constitution stated that no person should be subjected to torture or to cruel, inhuman or degrading treatment or punishment, whereas article 7 of the Covenant contained a second sentence to the effect that no one should be subject without his free consent to medical or scientific experimentation, thereby adding a dimension that was absent from the Constitution. The Constitution dated from 1978, and he asked what the Government of Sri Lanka had done to update its legislation in light of the subsequent Convention on the Rights of the Child. In general he would welcome the views of Mr. de Silva as to the difficulties he saw with regard to incorporating international human rights treaties into domestic legislation.

46. The restrictions on fundamental rights covered by article 15 of the Constitution referred to "such restrictions as may be prescribed by law in the interests of national economy", and that limitation was retained in the proposed Seventeenth Amendment. It caused him some concern, because while economic systems changed, constitutions were supposed to have a more permanent status.

47. Mr. WENNERGREN asked why individuals had no direct access to the Parliamentary Commissioner for Administration, or Ombudsman. He noted that an individual had to turn first of all to his Member of Parliament, who might then pass his petition on to the Parliamentary Petitions Committee, which might, finally, refer it to the Ombudsman. He wondered why Sri Lanka had chosen a system in which censorship could take place at a number of stages, whether constituents had a particularly close relationship with their Member of Parliament, and to what extent Members of Parliament were aware of the human rights enshrined in the Covenant.

48. Mr. LALLAH said that he agreed with a number of Committee members that the report was an inadequate basis on which to form an opinion about the implementation of the Covenant by Sri Lanka. Precisely because the report dealt with a country under a state of emergency, it should have provided a detailed enumeration of the rights that had been derogated from and an evaluation of all the derogations; and it should have given much-needed background on the nature of the conflict in Sri Lanka and the reasons for the current situation, so that the Committee could better understand the measures taken. The next periodic report should compensate for those omissions, but he earnestly hoped that the exceptional situation in Sri Lanka, which had thus far lasted seven years, would have come to an end by then.

49. Although he would have welcomed more time to consider the proposed Seventeenth Amendment to the Constitution, he did note with regret that the text did not amend article 16 of the Constitution, which upheld the validity of pre-existing laws, notwithstanding their inconsistency with chapter III of the Constitution governing fundamental rights. By way of explanation, the representative of Sri Lanka had cited the need to preserve continuity in a non-revolutionary State. Perhaps the Government would, in the light of the constitutional provisions adopted by other States in a similar position, consider including - as it had done in relation to chapter IV of the Constitution - a general clause to the effect that the Constitution was the supreme law of the land and that any other law inconsistent with it was void to the extent of that inconsistency.

50. He was curious as to why, throughout the proposed Seventeenth Amendment, the concept of ethnicity had been substituted for that of race, and whether the substance of the two terms was the same.

51. He also noted that the proposed Seventeenth Amendment in some clauses did not explicitly enunciate the relevant right. Article 13, for instance, spoke of arrests but did not spell out the right to liberty and freedom. The possibility of remedies hinged on the proper enunciation of rights in the Constitution.

52. Article 12 of the proposed Seventeenth Amendment appeared to express merely a formal concept of equality rather than the fully evolved concept of substantive equality requiring enforcement by law. The Committee had rich jurisprudence on that question, which might be of assistance to the State party. He was aware, however, that article 12 (4) did offer the possibility of affirmative action to disadvantaged sectors of society - women, children, youth or disabled persons. With regard to women and children, he was concerned by the inconsistency of the "personal laws" with accepted notions of basic rights and non-discrimination on the basis of sex or other criteria. The report had provided no information on how the "personal laws" derogated from the rights of women and children, even though the proposed constitutional amendment specifically recognized that their needs must be met.

(Mr. Lallah)

53. A more difficult question was that already raised by Ms. Chanet and Mrs. Higgins regarding derogations from rights in times of emergency within the framework of the Constitution itself as creating a kind of vicious circle. The problem lay in article 155 (2) of the Constitution, which could result in the notion that, all basic rights having been spelled out and the possibility of derogations having been established, all derogations authorized under the Constitution were possible not just in times of emergency but in normal circumstances as well. Other constitutions guaranteed fundamental rights, and provided for derogation from rights in times of emergency, but they also strictly limited the kinds of derogation, their extent and the particular rights subject to derogation.

54. Mr. de SILVA (Sri Lanka), responding to the questions raised concerning section I of the list of issues, said that it was a misconception to think that habeas corpus actions had been delayed for two years. When an application for habeas corpus was filed, a writ was issued immediately and the person was immediately produced in court. If the detention itself was being questioned, the court investigated the matter, and that was the part that could take time. The situation was particularly difficult when a petitioner claimed that a person was in custody and the State organs involved said that he was not. Such a matter could not be resolved in 24 hours: Sri Lankan law required a detailed affidavit on the alleged arrest from the petitioner and corresponding affidavits from the State bodies concerned, and an investigation of any conflict between the affidavits by a magistrate. Moreover, the remedy of habeas corpus could, under article 154P (4) of the Thirteenth Amendment to the Constitution, be filed in any of the 16 or 17 High Court zones and not just in Colombo; although it should be borne in mind that, given the size of the country, Colombo was no more than 200 miles away from any point.

55. In determining the "reasonableness" of any restriction on rights in Sri Lanka account was taken of the exigencies of the situation and the nature of the restriction sought. Reasonableness was virtually impossible to define, but his Government used as a yardstick the body of administrative law, where the most work had been done to define it.

56. As to the concern expressed that the proposed Seventeenth Amendment made the right to life open to derogation, he gave assurances that article 15 (1) of the proposed amendment, dealing with permissible derogations, specifically excluded article 13 (4), which governed the right to life.

57. Concern had been expressed that the word "temporary" in the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979, as amended by Act No. 10 of 1982, had not been defined. Section 29 of Act No. 48 stipulated that its provisions would remain in effect for three years. At the time it had been hoped that the terrorist activities in the country would be controlled within three years. However, as the situation had persisted for 12 years, it had been necessary to keep extending the provisions of the law.

(Mr. de Silva, Sri Lanka)

58. As to the cause of the conflict in the northern and eastern provinces of Sri Lanka he explained that since the end of 1975, some persons in the country had taken to terrorism as a means of severing a part of the country from the rest. Politicians and legitimate elected officials in those areas had been assassinated. The separatists' demands centred on their claim to a traditional homeland, whose boundaries had shifted from time to time. It should be borne in mind that in Sri Lanka, the principle of self-determination was interpreted - as it was in the United Kingdom and other countries - as being in effect only at the point of decolonization. He was aware that certain other countries thought of self-determination as an ongoing process that had to be reviewed from time to time, but that was a political judgement on their part.

59. In any case, since the problems had begun, the Government had tried various regional autonomy solutions. The Thirteenth Amendment to the Constitution had established the Provincial Councils, and provided a degree of autonomy that had been judged by several other Governments with which Sri Lanka had discussed the question as being a sufficient measure of devolution. Many years earlier, the separatists had sought a regional autonomy whose parameters had been far exceeded by the concessions made and the recognition of devolution found in the Thirteenth Amendment. However, that amendment had not appeared to satisfy them and they still were not satisfied. The problem was a political one to which he himself had no answer. As Attorney-General, he could only describe the legal framework within which the Government had attempted to solve it, namely, the measure of autonomy just described and the establishment of self-government in the many areas of activity spelled out in the Ninth Schedule established in article 154 G of the Thirteenth Amendment. He could not speculate what would placate the terrorists in Sri Lanka. There was an ongoing dialogue with them but, faced with murders and bombings, the State had to act, and it was difficult to say how far the situation could be allowed to go before the Armed Forces had to be brought in. No country had yet found a satisfactory solution to terrorism. Sri Lanka was doing its best.

60. He felt that it would not be proper for him to answer the question regarding the Indian peace-keeping forces - which in any case were a matter of historical interest only, since they had left the country a year earlier - without consulting the State concerned. He wondered if the Committee really required a specific answer.

The meeting rose at 12.55 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE 1058th MEETING

Held at Headquarters, New York,
on Tuesday, 9 April 1991, at 3 p.m.

Chairman: Mr. POCAR

later: Mr. AGUILAR
(Vice-Chairman)

later: Mr. POCAR

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Sri Lanka (continued) (CCPR/C/42/Add.9)

1. At the invitation of the Chairman, Mr. de Silva and Mr. Kalpage (Sri Lanka) took places at the Committee table.

2. The CHAIRMAN said that the Sri Lankan delegation would proceed to answer questions held over from section I of the list of issues.

3. Mr. de SILVA (Sri Lanka) requested that the extensive written replies it had provided in answer to the questions submitted in advance be considered as a supplement to Sri Lanka's second periodic report.

4. Concerning derogations from rights affirmed in the Covenant, he said that his delegation had been asked to set out the parameters of such derogations. If a list of all the laws which constituted derogations were required, it could be furnished in due course.

5. Article 15 of the Constitution of Sri Lanka divided the various restrictions on the exercise of fundamental rights into categories. The first category related to special rules and regulations under the Public Security Ordinance which were of an essentially temporary nature, although some had been in force for a matter of months or even years due to the continuing threat to public order and security. The second category consisted of laws permanently on the statute book which concerned restrictions prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence. Such statutes were aimed, for example, at the protection of women and children or at preventing the circulation of publications which might offend religious sensitivities. Similarly, the right to information was restricted by the requirements of privacy, State privilege or official secrecy.

6. Article 15 also made provision for restrictions on business activity which might be injurious to the national economy, for example in situations where it might be necessary to break up a monopoly or to restrict the import of certain goods.

7. Derogations were permitted under the emergency regulations, but the courts had the capacity to declare them unconstitutional. By way of illustration he mentioned the case in which the courts had overturned a government order (under the emergency legislation) banning posters in which the insurgents called for a curfew on business hours which, they hoped, would bring the economy to a standstill. In all cases the criterion for the acceptability of a derogation was that of reasonableness.

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8. Reasonableness was also the criterion applied in article 15 (8) of the Constitution, which limited the rights of a member of the Armed Forces to challenge an order. If the order was unfair, it could be challenged by a court, but not by the serviceman himself. Such a regulation simply reflected the exigencies of service discipline.

9. A question had been asked regarding article 16 of the Constitution, which provided that existing written and unwritten law should continue in force. In that connection, he said that it was acknowledged that, while a large number of customary laws, for example the Islamic laws restricting a married woman's right to dispose of property, might be regarded by the Committee as obsolete and discriminatory, their repeal could give rise to problems because of popular resistance to change.

10. With regard to the functions of the Ombudsman, he said that the reason why recourse to the Ombudsman was solely through a Member of Parliament was that alternative remedies were available. Persons with complaints relating to unfair treatment or discrimination had recourse either directly to a court of law, to the Commission for the Elimination of Discrimination, or, through a Member of Parliament, to the Ombudsman. No information was immediately available to him on the number of cases handled by the Ombudsman, but statistics could be supplied later.

11. Referring to standards of reasonableness as they applied to the emergency regulations, he said that the criteria followed were based on judicial precedent in administrative law in both Sri Lanka and the United Kingdom. He was unable, however, to find any statement of the international standard of reasonableness, and would be grateful if any member of the Committee could refer him to a document in which it was set out.

12. On the question of the period of operation of the Prevention of Terrorism Act, he said that, although the Act had originally been passed in 1979 for a period of three years, the continuing civil unrest had made it necessary to annul the limiting provision contained in section 29 of that Act. The Act itself remained in force.

13. The provision in the Act concerning robbery with violence of government property, and of banks and cooperatives engaged in public business, in addition to related offences involving murder, violence, coercion and intimidation, had been adopted in response to the objectives of the insurgents, who were endeavouring to prevent the Government and other public institutions from engaging in any activity in the areas that terrorists sought to control. The penalties provided in the Act did not apply with equal rigour to all offences, and the provisions prohibiting inflammatory utterances and graffiti were paralleled in the legislation of many other countries.

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14. Concerning the compatibility of the Seventeenth Amendment to the Constitution with the provisions of the Covenant, he said that the intention behind the Amendment was to bring the Constitution more closely into line with that instrument, and that he would communicate the Committee's views regarding the compatibility of any specific provision in the Amendment to his Government.

15. In connection with the question of habeas corpus, he said that petitions for habeas corpus were only unsuccessful in cases where an allegation had been made of unalwful detention and the authorities were able to satisfy the court that the persons concerned were either guilty of offences or of such conduct as justified their detention. It should also be pointed out that cases involving detention were processed in chronological order, and that some petitioners had tried to "jump the queue" by filing applications for habeas corpus. It was known that international non-governmental organizations had made financial assistance available to petitioners in order to enable them to file their applications, thus increasing the number of such actions and adding to the delays in processing them. In no case, however, did an application take two years to process, as had been alleged. Normally the period was one week, but in cases in which the authorities alleged that the person concerned was not in fact in their custody, the necessary investigations could of course be lengthy.

16. Article 126 of the Constitution established that applications to the Supreme Court regarding allegations of infringements of fundamental rights should be made within one month, a period which was clearly inadequate and which the Seventeenth Amendment sought to extend to four months. In any case, the one-month limitation was not treated as mandatory, and was invoked only in cases where there had been an unnecessary delay in the application.

17. He would prefer not to answer the question about the Indian peace-keeping force, since the force had been withdrawn more than a year previously, but would do so if pressed.

18. In conclusion, he said that he could not agree with the general proposition that international law required that the Covenant be directly enforceable in domestic law.

19. Mr. PRADO VALLEJO thanked the representative of Sri Lanka for his reply in connection with habeas corpus, but said that it had been his impression that some such cases had indeed dragged out for two years or more. He had information indicating that the Minister of State for Justice, addressing Parliament in March 1990, had stated that there had been 720 applications for habeas corpus between July 1987 and March 1989, and that some of them had taken more than two years to process, the minimum period being eight days.

20. He welcomed the proposed extension of the period within which applications concerning infringements of fundamental rights could be made to the Supreme Court, but felt that, in principle, there should be no limitation in such cases.

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21. Referring to the Indian peace-keeping force, he said that during the period in which the force had been engaged in Sri Lanka a number of human rights violations had occurred, and he wondered what investigations had been carried out and what steps taken to compensate the victims.

22. Mr. Aguilar (Vice-Chairman) took the Chair.

23. Mr. de SILVA (Sri Lanka), replied that when he had referred to a four-month period for the filing of a fundamental-right application, he had not meant to imply that thereafter the case would be closed. If an individual's human rights were violated by a criminal act, the institution of criminal proceedings was covered by the Code of Criminal Procedure, under which there was no statute of limitations for the crime of murder, and a limitation of 20 years for all other crimes. However, when a special remedy was sought via the Supreme Court, the appeal had to be made expeditiously.

24. With regard to the question of habeas corpus, a person in custody must be produced within eight days from the date on which the application was filed. On the other hand, if parties alleged that a particular individual was being detained illegally, while the Government denied that such a person was in its custody, there was no way of producing that person within the stipulated time.

25. With regard to the activities of the Indian peace-keeping force, his Government was prepared to pay compensation to anyone who could establish that he or she had suffered as a result of those activities. However, as the force was no longer within Sri Lankan territory, his Government could not hold inquiries to determine whether there had been any human rights violations.

26. Mrs. HIGGINS said that there were fundamental differences of approach between the State party and the Committee with regard to the critical issue of restrictions and derogations. From the point of view of the Covenant, the proper course of action for a State party, if it was totally unable to accept the implementation of a particular human right within its territory, was to make a reservation. Furthermore, if the State party accepted a provision in principle, but felt that it must be limited in a particular case, then it must first provide for that possibility in its constitution; secondly, the constitutional provision must be permitted under the Covenant; and thirdly, it must be applied only to a particular case. If a State party wished to suspend the application of a provision to all its citizens for a given period, it must do so through derogation, provided that the right was one in respect of which derogation was permitted and that there was a threat to the existence of the nation.

27. Turning to the proposed Seventeenth Amendment to the Sri Lankan Constitution, she said that while it was difficult to specify her objections to each clause, they could be summarized as follows. First, restrictions which were not derogations could be applied only to articles of the Covenant for which restrictions were allowed; not all the Sri Lankan restrictions fell

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into that category. Secondly, restrictions were not permitted "in the interests of", but solely on grounds of necessity. The interests of the national economy or the promotion of religious harmony were not proper grounds. In her view, therefore, article 15 as a whole should be redrafted.

28. Mr. LALLAH said that he did not wish to give the Sri Lankan representative the impression that the submission of a supplementary report in the form of written replies had cleared up all the difficulties. If a supplementary report was to be considered by the Committee as a whole, it would have to be translated into all the official languages, and he did not see how that could be done within such a short time. If the supplementary report had been submitted before the start of the current session, the consideration of the second periodic report of Sri Lanka would clearly have been deferred. Under the current circumstances, the exercise would not be as productive as it might have been.

29. Mr. EL-SHAFEI requested clarification of the status of international treaties and agreements within the constitutional and legal framework of Sri Lanka, since they were mentioned in only one clause, article 157, and that article referred to only one category of treaties.

30. Mr. MAVROMMATIS said that he fully agreed with Mrs. Higgins. The Constitution appeared to be excessively cautious in its approach. Most countries did not include in their constitutions restrictions on fundamental rights to cover cases of defamation or contempt of court. In some cases, however, such as discrimination against women under Islamic law, a State party was required either to apply the Covenant or to enter a reservation.

31. With regard to the proposed Seventeenth Amendment, he had difficulty with article 12 (2), which outlawed discrimination on certain grounds but not others such as race or national or social origin. Article 15 contained sweeping limitations in areas where the Covenant did not allow restrictions. Article 12 (1) (a) provided that all persons were equal before the law and were entitled to the equal protection of the law. However, the Sri Lankan representative had stated that the provision could be restricted on grounds of national security or public order. It was hard to understand the rationale for such a restriction. Article 12 (3) prohibited discrimination with regard to access to certain public places. By expressly enumerating those places, the Government left open the possibility that such discrimination might be permitted elsewhere.

32. Mr. de SILVA (Sri Lanka) said that the courts in his country were required to certify the constitutionality of any statute before enactment. Any proposed restriction of a right which was not specifically permitted by the Constitution would not be accepted by the courts, even if it was understood to be part of normal jurisprudence.

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33. With regard to the question of entering a reservation, it was an extreme step for a country to take, because once a reservation had been made, it was very difficult to remove it from the statute books.

34. Replying to Mr. El-Shafei, he said that article 157 related to commercial treaties. The International Covenants were not automatically incorporated into Sri Lankan law but only upon adoption by the courts.

Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26 of the Covenant) (section II of the list of issues)

35. The CHAIRMAN read out section II of the list of issues concerning the second periodic report of Sri Lanka, dealing with: (a) the composition and functions of the Commission for the Elimination of Discrimination and the Monitoring of Fundamental Rights and the results of its operation (para. 17 of the report); (b) statistical data on women's participation in the political, economic, social and cultural life of the country and the proportion of the sexes in schools and universities; (c) the treatment of aliens and the areas, other than the exercise of political rights, in which the rights of aliens were restricted as compared with those of citizens.

36. Mr. de SILVA (Sri Lanka), referring to section II (a), said that the Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights consisted of persons having expertise in such areas as law, medicine, science, engineering, banking and administrative or social service. The Chairman of the Commission was a retired Justice of the Supreme Court. The members of the Commission had permanent tenure. Their mandate, as set out on page 7 of the supplementary report, was to eliminate unjust discrimination on the grounds of race, religion, language, caste, sex, political opinion, or place of birth by the Government or any government agency. The Commission was not empowered to investigate discrimination by a private organization. The Commission had investigated 2,204 cases of which 1,441 had been settled, 109 were in progress, and the rest had not been pursued for various reasons.

37. Referring to section II (b), he said that the number of women admitted to university had been 10,535 and 12,671, respectively, in the academic years 1987-1988 and 1988-1989. In the period 1985-1986, 1,532,700 women had been employed, as compared with 3,624,700 men. That disparity did not reflect any active discrimination, but merely the fact that, in the social context of Sri Lanka, fewer women than men sought employment.

38. With regard to the participation of women in political life, he noted that, since 1931, universal adult enfranchisement had ensured the free and unhindered participation of women in the country's political institutions. Women served as mayors of major cities and held seats in the National Parliament and posts in the Cabinet of Ministers. His country had also elected the world's first woman Prime Minister, who was currently the leader of the opposition in the National Parliament. It was therefore clear that women did not suffer any discrimination on grounds of sex.

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39. Turning to section II (c), he said that under article 12 (1) of the Constitution, all persons, regardless of nationality or citizenship, were equal before the law and were entitled to equal protection of the law. However, certain rights, such as freedom of movement or the right to choose residency within Sri Lanka, were not equally available to aliens. While there was no statute restricting an alien's freedom of movement, the Constitution provided that, if necessary, non-citizens should not have the same freedom to move within the country as citizens. Furthermore, with regard to entry and extradition, provision had been made for the internationally accepted norm that the extradition of a non-national should be governed by the same rules as the extradition of a national. In certain cases, the courts had held that the applicability of the extradition rule depended upon the nationality of the person concerned. However, his Government was also seeking to comply with the Covenant, which did not recognize such a distinction. Article 12 (1) (a), recognizing equal access to the judicial process, had been part of the constitution since 1978.

40. Mr. SADI agreed that the restrictions to fundamental rights under article 17 were unacceptable under the Covenant.

41. He noted that Sri Lankan women were allowed to work outside the country under conditions bordering on servitude, often leaving their children and families behind, but were not accorded any remedies, even by their diplomatic representatives abroad. That situation approached discrimination against women and should be addressed.

42. Mr. ANDO said that the grounds of discrimination outlawed by the Covenant were spelled out clearly in that instrument and the Seventeenth Amendment to the Constitution could easily be brought into line with it. Measures to eliminate sex discrimination did not cover the private sector, but such discrimination often occurred there. He wondered whether Sri Lanka was party to the Convention on the Elimination of Discrimination against Women and whether discriminatory practices of private enterprises could be made punishable under domestic law.

43. Mr. WENNERGREN said that, while article 25 of the Covenant provided the fundamental right to vote without any of the distinctions mentioned in its article 2 and without unreasonable restrictions, paragraph 89 of the Constitution deprived prisoners serving sentences longer than six months of the right to vote during their sentence and for seven years thereafter. It was difficult to find objective reasons for such treatment of prisoners, particularly in the light of article 10 of the Covenant, which stated that the aim of correction was rehabilitation. It appeared that prisoners could not be regarded as reformed for seven years following their sentence and were not considered real citizens while in prison. He would welcome an explanation of the historical or cultural factors behind that practice.

44. Mr. de SILVA (Sri Lanka), in reply to Mr. Sadi's question regarding women working outside the country, said that the Government could not deny a woman's freedom to work abroad, and it was the responsibility of the receiving country to treat its workers properly. Abuses, while unfortunate, were outside the Government's control. He was grateful that the matter had been brought to his attention, and would communicate it to his Government, but aside from diplomatic protest, no legal remedy was available.

45. In response to Mr. Ando's questions concerning the private sector, if international agencies sought to invest in his country, then it followed that international norms must be observed regarding employment practices. If any restrictions on the private sector existed under international law, he would communicate them to his Government. However, in his understanding, private companies were beyond the dictates of the Government.

46. Concerning the voting rights of prisoners, a limited period of disenfranchisement was imposed for prior violations of election laws; that was meant to be a deterrent. Prisoners were not allowed to vote for historical reasons which had existed before the Constitution.

47. Mr. SADI agreed that it was primarily the responsibility of the receiving State to ensure fair working conditions. The matter should be brought up with States parties in the context of periodic reports. However, Sri Lanka could do more to protect its citizens working abroad. He suggested that it might be possible to invoke article 24 of the Covenant in that regard, since it provided that every child had the right to such measures of protection as were required by his status as a minor.

48. Mr. MAVROMMATIS noted that many South-East Asian women were employed in his country, and that the Sri Lankan Government had made frequent inquiries about the status of its nationals.

49. Mr. de SILVA (Sri Lanka) said that he would welcome more information from the Committee regarding invocation of article 24 of the Covenant. If such a course of action were possible, he would inform his Government.

Right to life (article 6 of the Covenant) (section III of the list of issues)

50. The CHAIRMAN read out section III of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) number of occasions since the consideration of the initial report upon which the courts had ordered the death penalty and the number of such sentences carried out; (b) rules and regulations governing the use of firearms by the police and security forces, violations, and measures taken to prevent recurrence; (c) Government awareness of reports alleging extrajudicial executions and results of any investigations of such reports; (d) results of deliberations of the Presidential Commission of Inquiry into Disappearances established in January 1991; (e) clarification of the composition, powers and function of the Organization for Protection of

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Human Rights through Law Enforcement Agencies (ORPTLEA) and the results of its activities; (f) additional information on the provisions of Emergency Regulations 55 B through F relating to post-mortems and inquests; and (g) progress in reduction of infant mortality in the period under review.

51. Mr. de SILVA (Sri Lanka), referring to section III (a), said that no death sentence had been carried out since 1977, though the death penalty remained on the statutes. Its imposition was mandatory for a few offences such as murder, treason and abetment of suicide, and could be imposed for certain drug offences. The convicted person had the right of appeal to the Court of Appeal and to the Supreme Court. The law required the trial judge imposing a death sentence to forward a report to the President with his recommendations. Since 1977, the President had invariably exercised his power to commute the sentence to life imprisonment.

52. Regarding section III (b), police officers did not normally carry firearms and on those occasions when they did, they were required to use a minimum of force; use of excessive force was considered a criminal offence. Mandatory procedures were followed for the issuance of weapons and ammunition. In cases of misuse of firearms, the offender faced disciplinary action or criminal trial. Attacks on police stations and police officers by terrorist groups had made it necessary to permit a small quantity of weapons and ammunition to be kept outside the armouries for use in an emergency.

53. The Government of Sri Lanka was aware of the allegations of extrajudicial executions, a number of which had been carried out by members of militant or terrorist groups. The Government was vigilant that no State agency should resort to such practices, but a few cases were under investigation. It had maintained an open dialogue with the United Nations and its human rights bodies, and had examined relevant United Nations reports. Unfortunately, particularly in the North and East, a situation of conflict and insecurity persisted, preventing adequate investigation in some cases.

54. In response to section III (d), the Presidential Commission of Inquiry into Disappearances had received seven complaints which fell outside its terms of reference and 15 complaints of removals by unknown persons or where the whereabouts of those removed were unknown. Those 15 complaints were under investigation by the Commission's investigation unit, which provided periodic progress reports. Public hearings in respect of the complaints so far received were expected to begin as soon as the investigations had been concluded.

55. He listed the membership, both ex officio and nominated, of the Organization for the Protection of Human Rights through Law Enforcement Agencies (section III (e)). Its objectives were to promote and coordinate the work of law enforcement officials and agencies in their recognition of and respect for human rights; to study and formulate principles, practices, procedures and prerequisites for the observance of human rights in law

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enforcement; to assist in formulating policies and codes of conduct to advance the administration of justice in general and the observance of human rights in particular; to encourage every law enforcement official and agency to practise self-discipline in conformity with the principles of the Universal Declaration of Human Rights as embodied in the Constitution and laws of Sri Lanka and other human rights instruments ratified by the Government of Sri Lanka; and to take all necessary steps for the furtherance of those objectives.

56. In response to questions regarding Emergency Regulations 55 B through F relating to post-mortems and inquests (section III (f)), he said that he would make available the provisions of those Regulations to members.

57. With regard to section III (g), infant mortality had decreased appreciably, to 20 per thousand live births from a rate of 22.6 in 1986. That achievement was largely due to Government social welfare policies such as food subsidies, pre-natal care and free health care for the entire population.

58. Turning to the allegations of disappearances or extrajudicial executions, he contended that in periods of increased terrorist activity, the number of such allegations increased. The security forces had indeed been guilty of some instances of misconduct, but not all such incidents were attributable to them. In some cases, family members of victims had sometimes taken the law into their own hands and had taken revenge. The Government did not condone such action, but simply wished to explain the realities of the situation. As a result, the Government had invited the Working Group on Enforced or Involuntary Disappearances to visit the country and offer its expertise to assist in ending the phenomenon.

59. It had also been alleged that members of the armed forces committing such acts were not being prosecuted. In most such cases, however, there was insufficient evidence to obtain an indictment. A list of such cases was annexed to the replies to the list of issues. The Government made no claim to completely satisfactory results, but the situation was coming under control.

60. Mr. Pocar (Italy) resumed the Chair.

61. Mr. MAVROMMATIS, while welcoming the news that the death sentence had not been carried out since 1977, suggested that, pending de jure abolition of the death penalty, the Government might look into the matter of the mandatory death sentence in cases of abetment of suicide, since suicide had been decriminalized in most countries. Further, though drug offences had serious consequences, in many countries they were not seen as meriting the death penalty. In his country, the courts had found mandatory death sentences unconstitutional on the basis of international human rights covenants.

62. He requested clarification of the emergency regulations in respect of inquests and post-mortems. According to his interpretation of the regulations, if an individual died while in custody of the security forces, an inquest was held only if requested.

63. Mr. MYULLERSON expressed concern about reported cases of disappearances, extrajudicial executions and acts committed by vigilante groups in Sri Lanka. He requested the delegation of Sri Lanka to comment on the allegations contained in a report published by Amnesty International; in particular, he wished to know what was covered by the term "vigilante groups". While he did not know whether or not the allegations in question were true, he believed that the information supplied by Amnesty International and other human rights organizations was generally reliable. While terrorist acts accounted for most of the cases of disappearances in Sri Lanka, the State was nevertheless responsible for investigating them, especially in the light of the Committee's general comment on article 6 of the Covenant.

64. Mr. AGUILAR associated himself with the comments made by Mr. Mavrommatis on the issues of suicide and post-mortems. He attached a great deal of importance to the information which the Committee received from Amnesty International and supported Mr. Myullerson's comments on that organization's recent report. He observed that, although Emergency Regulation 55 F was no longer in force, it had been in force during the period under consideration; moreover, Emergency Regulations 55 B-55 F made it possible to dispense with investigations of deaths caused by the police.

65. Mr. LALLAH wished to know why the State had been relieved of the obligation to investigate any deaths resulting from violence. He inquired whether anyone had been convicted of abetting suicide and, if so, how many people had been sentenced to death. He wished to know how many people, if any, had died while in custody and what steps were being taken to ensure that bodies were not disposed of in order to exonerate the security forces. Finally, he wished to know what constituted a drug-related offence, and he requested information on the frequency of such offences in Sri Lanka and the number of people who had been sentenced to death for those offences.

66. Mrs. HIGGINS said that she was pleased at Sri Lanka's invitation to the Working Group on Enforced or Involuntary Disappearances. She appreciated the information provided by the Sri Lankan representatives on inquiries which were currently in progress and on the Presidential Commission of Inquiry. She understood that it was impossible for the Presidential Commission of Inquiry to bring charges without reliable witnesses; nevertheless, it was the Government's responsibility to take vigorous action to control, either directly or indirectly, the activities of terrorist groups.

67. Mr. de SILVA (Sri Lanka) said that, while he agreed with Mrs. Higgins, the lack of evidence was due to fear on the part of potential witnesses. However, he fully agreed that it was the State's responsibility to do everything within its power to prevent criminal elements from intimidating law-abiding citizens.

68. Suicide had not been decriminalized because it was one of the few offences which could not be punished. The provision on suicide in the Penal Code had been based on the Christian concept that an individual did not have

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the right to take his own life. Since, under Sri Lankan law, the person who committed suicide was considered to be committing an act of murder on himself, the person who abetted the suicide was equally guilty of the offence. There had been only two cases of abetment of suicide, both of which had involved suicide pacts. While he agreed that the law on suicide and abetment of suicide was anachronistic, he believed that it should remain in the Penal Code.

69. Unfortunately, he was not able to provide figures regarding the quantity of drugs an individual had to have in his possession in order to be guilty of a drug-related offence. Since Sri Lanka was becoming a transshipment point for illicit drug trafficking, the Government had decided to retain the death penalty as a deterrent to potential offenders. A number of foreigners convicted of drug-related offences were currently serving sentences commuted from death to life imprisonment.

70. Inquest procedures had been relaxed under the Emergency Regulations because it had become practically impossible to hold an inquest in the current circumstances. Under the law, when an inquest was held, a magistrate was required to go to the scene of the crime and conduct an investigation. However, since magistrates had almost no access to terrorist hideouts, the Government had decided to waive the requirement for an inquest but had continued to insist on a post-mortem which was conducted in the mortuary, and on keeping a record of injuries, the aim being to reduce the likelihood that bodies of murder victims would be passed off as those of victims of confrontation with the security forces. The situation was not ideal, and that was why the Emergency Regulations had been modified. It had been left to the discretion of the Inspector General of Police to call for an inquest where a preliminary police investigation indicated that there was some culpability on the part of the person who had caused the death; however, in cases where there had been a straightforward shootout between terrorist groups and government soldiers, inquests were not usually held.

71. There had been three or four instances of persons dying while in police custody. In at least two cases, the officers concerned had been charged with murder or similar offences and some had been found guilty of lesser offences such as wrongful confinement or of having caused injury without intending to cause the death of the prisoner or detainee.

72. He believed that the allegations made by Amnesty International and other human rights organizations were only as reliable as their information sources. The Amnesty International report in question contained several allegations which were incorrect. However, he would prefer not to use the Human Rights Committee as a forum for discussing the veracity of those allegations.

Treatment of prisoners and other detainees (articles 7 and 10 of the Covenant) (section IV of the list of issues)

73. The CHAIRMAN read out section IV of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) controls instituted to ensure that persons arrested or detained were not subjected to torture or to cruel, inhuman or degrading treatment; (b) existence of machinery for carrying out an independent and impartial investigation of allegations of torture and of arbitrary and extrajudicial executions, and the conduct and results of such independent investigations; (c) information on arrangements for the supervision of places of detention and on procedures for receiving and investigating complaints; and (d) compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and prisoners' awareness of and access to the relevant regulations and directives.

74. Mr. de SILVA (Sri Lanka), replying to section IV (a) of the list of issues, said that every person admitted to prison was examined by a doctor who recorded his observations, which served as a reference for verifying whether the condition of the prisoner had deteriorated in any way during his detention. The detainee was then informed of his rights and duties as a detainee, including information regarding his right to complain about any ill-treatment during his period in custody. The Emergency Regulations also required the magistrate having jurisdiction over the area where the prison was situated to visit the prison at regular intervals and to record any complaints from detainees.

75. Under the Prisons Ordinance, the Minister of Justice appointed a Board of Visitors who were empowered to visit any prison in Sri Lanka to examine conditions, hear inmates' complaints and make appropriate recommendations to the authorities. There was also a local Prison Visitors Committee for each prison, which was also appointed by the Minister and was composed of persons not holding public office; visits by that Committee usually took place on a weekly basis. The Prison Ordinance also authorized a magistrate to visit a prison at any time and to question any detainee.

76. In July 1990, the Sri Lankan Government had signed an agreement with the International Committee of the Red Cross (ICRC) with a view to enabling that organization to commence humanitarian functions in Sri Lanka in association with the country's authorities. Since then, the staff of the ICRC delegation had increased to about 65 persons, who were active throughout the country. Members of the delegation were granted free access to all places of detention, including prisons, police stations and detention and rehabilitation centres, in order to ensure that internationally accepted norms were maintained for the safety and well-being of inmates. Delegates of ICRC examined the living conditions of detainees and their treatment by the authorities, welfare facilities, food and other matters, and they recorded any complaints which, after investigation, were conveyed in detailed periodic reports to the Sri Lankan Government. The Government considered the reports at the highest political level with a view to implementing the recommendations contained in the reports.

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77. With respect to section IV (b), he said that the Supreme Court in the exercise of its fundamental rights and jurisdiction could and did examine allegations of torture made by detainees. Such complaints could be made either by detainees or on their behalf. The Court of Appeal could, when examining the legality of a detention by the procedure of a writ of habeas corpus, examine any allegation of the mistreatment of a detainee during his period in custody, and it had done so in several cases. More often than not, the inquiries had proved that the allegations were unfounded. However, in cases in which the allegations were substantiated, compensation for the victim and criminal prosecution of the offender had been ordered. Any proven act of extrajudicial execution was treated as a case of murder.

78. Replying to section IV (c), he said that a representative committee under the umbrella of the All Parties Conference was required to visit periodically places other than regular prisons where detainees were being held. That Committee recorded and considered any complaints which were recorded.

79. With respect to section IV (d), the briefing of detainees also included information regarding the United Nations Standard Minimum Rules for the Treatment of Prisoners and, in prisons where the Standard Minimum Rules were available for reference, detainees were free to consult them.

80. Mrs. HIGGINS wished to know whether ICRC had full access to the north-eastern part of Sri Lanka. While section 7 of the Prevention of Terrorism (Temporary Provisions) Act was, broadly speaking, acceptable in terms of article 9 of the Covenant, problems arose when section 9 of that Act, which stated that section 7 did not apply when there was a detention order. Under section 9, a person who was believed or suspected by the Minister of Justice to have a connection with any unlawful activity might be detained, by order of the Minister, for a period not exceeding three months in the first instance; thereafter, extensions were permitted up to a period of 18 months. It was the view of the Committee that 18-month periods of detention, based purely on the Minister's suspicion or belief and without access to a magistrate or to the courts, presented very grave problems from the point of view of article 9 (3) of the Covenant.

81. Mr. ANDO associated himself with Mrs. Higgins' observation.

82. Mr. LALLAH said that the special legislation which had been enacted to deal with the extraordinary situation in Sri Lanka should provide for writs of habeas corpus. He wondered to what extent the judicial authorities could be empowered to take unusual steps, such as visiting prisons. He inquired whether, in the case of a particular complaint, the authorities were prohibited from detaining persons elsewhere than in publicly recognized and gazetted prisons. He also wished to know whether judges were allowed to visit prisons which were not proclaimed detention centres.

83. Mr. de SILVA (Sri Lanka) said that there were a few camps and places other than the regular prisons which had been designated as places where detainees could be held. They were visited by a group of persons appointed under the umbrella of the All Parties Conference. While any judge had the right to visit such places, there had been no cases of such visits because, whenever a writ of habeas corpus was issued, the detainee was invariably brought to court within the first few days; thereafter, the detainee appeared in court whenever the inquiry was taken up. However, judges had the right to visit prisons and magistrates were mandated to visit them at regular intervals.

84. The unlawful activities defined in the Prevention of Terrorism (Temporary Provisions) Act involved activities of a terrorist nature. In Sri Lanka, there were various views regarding that type of preventive detention. Section 13 (2) of the Act provided that any person in respect of whom any detention order or restriction order had been made should be informed of the unlawful activity in connection with which such order had been made and such person or any other person on his behalf might make representations to the Advisory Board. The Advisory Board took the place of the judicial authority before which persons were normally brought to trial.

The meeting rose at 6.05 p.m.

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Forty-first session

SUMMARY RECORD OF THE 1059th MEETING

Held at Headquarters, New York,
on Wednesday, 10 April 1991, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. DIMITRIJEVIĆ (Vice-Chairman)

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Sri Lanka (continued) (CCPR/C/42/Add.9)

1. At the invitation of the Chairman, Mr. de Silva (Sri Lanka) took a place at the Committee table.

2. The CHAIRMAN invited the representative of Sri Lanka to resume his statement in reply to questions raised by members of the Committee on section IV of the list of issues.

3. Mr. de SILVA (Sri Lanka) said that the provisions of section 9 of the Prevention of Terrorism (Temporary Provisions) Act of 1979 were in keeping with article 9 of the Covenant. Detention was not used in an arbitrary manner. A detention order was issued when the Minister had reason to believe that a person was connected with or concerned in any unlawful activity constituting an offence as defined under the Act. The detention must be in accordance with the procedures laid down in sections 9, 10 and 13 of the Act. In accordance with article 9 (2) of the Covenant, a person so detained was informed of the reasons for his arrest.

4. Although the application of article 9 (3) of the Covenant was subject to a restriction, there were certain safeguards. While the Minister could order the detention of a person for a period not exceeding three months in the first instance and any such order could be extended for a period not exceeding three months at a time, the aggregate period of such detention, could not exceed 18 months. A detained person could lodge a complaint with an Advisory Board composed of retired judicial officers or lawyers, who had the necessary legal background to evaluate such complaints. Furthermore, any person deprived of his liberty under section 9 of the Prevention of Terrorism Act could challenge the validity of the detention order in a court of law. If he was found to be the victim of an unlawful arrest, the court had the power to award compensation. Although the requirements of article 9 (3) of the Covenant might not strictly be met because of the nature of the Advisory Board, Sri Lanka felt that that restriction was permitted and that the members of the Board were competent to perform judicial functions.

Liberty and security of the person (articles 9 and 11 of the Covenant) (section V of the list of issues)

5. The CHAIRMAN read out section V of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) clarification of the provisions of the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 and information on allegations that the safeguards included in the Act had not been strictly observed, particularly in relation to arrests of

(The Chairman)

terrorist suspects; (b) the circumstances and periods for which persons might be held in preventive detention without being charged with a criminal offence; the authorities that had the power to order such detention; (c) remedies available to persons (and their relatives) who believed that they were being detained wrongfully; the effectiveness of such remedies; (d) how speedily after arrest a person's family was informed and how soon after arrest a person could contact his lawyer; and (e) information on detention in institutions other than prisons and for reasons other than crimes.

6. Mr. de SILVA (Sri Lanka) said that under the Prevention of Terrorism Act a special procedure had been instituted whereby the period within which a detained person must be brought before a magistrate had been extended from 24 hours to 72 hours. That had been necessary because of the practical problems involved in transporting persons from remote and inaccessible areas and attempts to rescue suspected terrorists. There was no obstacle to recourse to due process of law for challenging detention orders. The safeguards set forth in the Act, particularly with regard to arrests of suspected terrorists, could be enforced through fundamental rights applications or habeas corpus applications to the Supreme Court.

7. Under the Prevention of Terrorism Act, only the Minister concerned had the authority to issue a detention order. The Minister of Defence had the authority to order persons detained in connection with terrorist activities. Much of the information concerning such activities was of a highly confidential nature because it was obtained by undercover police agents or from suspected terrorists themselves. In order to protect the lives of such persons, that information could not be disclosed in an ordinary court of law. A detention order was valid for only three months. In order to renew such an order, the Minister was required to determine whether further detention was necessary. In any case, the total length of detention could not exceed 18 months in respect of the same offence. Conditional release from detention was possible in certain cases and restrictions were placed on freedom of movement and association. If an investigation indicated that a suspected terrorist could be released from custody, he might be released and kept under surveillance.

8. Remedies for wrongful detention were available through the procedure based on a writ of habeas corpus, a fundamental rights application or an application to the Advisory Board established under the Prevention of Terrorism Act. A person's family was informed of his arrest as soon as possible. Often persons were arrested away from the area where they resided and were reluctant to provide information on the whereabouts of family members in order to thwart police investigations. That naturally caused delays in informing family members of a person's arrest. Access to a detainee after his arrest might be denied during the initial investigation for a maximum period of approximately two weeks. Nevertheless, the reasons for denying such access and the duration of that period could be challenged in a court of law.

(Mr. de Silva, Sri Lanka)

9. There were two types of institutions in which detained persons were held. Persons who were considered dangerous and liable to escape were imprisoned under maximum security conditions. Detainees who were not considered to be deeply involved in unlawful activities were kept in detention camps, where the conditions were less rigorous than in prisons. That arrangement was necessary because of problems related to overcrowding. With regard to preventive detention, his country felt that in an emergency situation a person who was likely to commit a crime or had a criminal record might be kept in detention for a limited period. Although that might be unfair, it was considered dangerous to wait until a person committed further terrorist acts before arresting him. Such preventive detention was viewed as a measure for protecting society and was subject to specific conditions.

10. Ms. CHANET requested a further clarification of the phrase "any person connected with or concerned in any unlawful activity" in parts II and III of the Prevention of Terrorism Act. The reporting State should explain the type of cases or situations dealt with under those parts of the Act. It would be useful to know whether, under section 7 (1) and (2), a Magistrate could himself decide whether or not to release a person from custody. The phrase "any place" in section 7 (3) (a) of the Act should be clarified. Lastly, it was difficult to understand how the provisions of section 11 (5) fulfilled the requirements of article 9 (4) of the Covenant.

11. Mr. MAVROMMATIS said that sections 16 and 18 of the Prevention of Terrorism Act were quite sweeping and could impair guarantees for a fair trial. Accordingly, the authorities concerned should use extreme vigilance in applying those provisions. No reference was made in section 16 to statements elicited through threats or torture. The reporting State should indicate what status such statements might have in a trial. Under section 16 (2) of the Act the burden of proving that a statement was irrelevant was on the person asserting it to be irrelevant. Irrelevant statements were usually excluded by the judge. Further information should be provided on the weight accorded to a statement given in a case in which there was no cross examination and to the corroborated statements referred to in section 16 (3). The Committee would appreciate additional information on the practical application of section 18 (1) of the Act. The provisions of section 18 (2) concerning contradictory statements were very sweeping and could lead to miscarriages of justice. He hoped that the Attorney-General had the discretion to prosecute or refrain from doing so in that regard. The reporting State should indicate whether those provisions applied to the accused himself when he gave evidence as a witness or only to other witnesses.

12. Mr. PRADO VALLEJO said that there were serious problems in Sri Lanka affecting detained persons and their lawyers. There had been reports of threats and acts of violence against lawyers who had tried to defend certain accused persons. The reporting State should indicate what measures had been taken to ensure that lawyers could carry out their professional responsibilities without interference. There had also been reports of a

(Mr. Prado Vallejo)

number of arrests without detention orders. Elements of the security forces had detained persons suspected of submitting complaints against the security forces. The Committee would like to know whether such acts had been investigated. While measures must be taken to defend society, members of the security forces must not be allowed to carry out acts of State terrorism. Lastly, the reporting State should provide further information on how the power of the Minister to extend detention orders was actually used and indicate whether there were safeguards against the unjustified extension of such orders.

13. Mr. MYULLERSON stressed the need to ensure strict compliance on the part of security forces with laws and international human rights standards. With regard to the Prevention of Terrorism Act he inquired whether the habeas corpus rule applied in cases of preventive detention and how the lawfulness of such detention was monitored. Further information would be appreciated with regard to the application of section 14 (2) (a) (i) of the Act and whether those provisions had led to the suppression of information and abuses by the security forces.

14. Mrs. HIGGINS said that under article 9 (3) of the Covenant, it was simply not permissible to do away with the requirement that anyone arrested on a criminal charge should be brought promptly before a judge because that person was a potential offender or a suspected terrorist. Furthermore, the Advisory Board, referred to in section 13 of the Act, did not meet the requirments of article 9 (3) of the Covenant because it was not separate from the executive branch and had advisory, not judicial, powers. In addition, no time-limit was set for bringing a detained person before the Advisory Board.

15. Mr. LALLAH recalled that Sri Lanka had made a derogation under article 4 of the Covenant to articles 9 (3) and 14 (3) (b), but nevertheless felt that the comments of Mrs. Higgins were correct. He welcomed the information provided by Mr. de Silva concerning provisions for releasing suspected terrorists under certain conditions and on the two Privy Council decisions on what was reasonable in such matters, but he emphasized that the main standard against which any such measures were to be judged was the provisions of the Covenant, not the constitutions of other countries to which the Privy Council had referred in its decisions.

16. Section 9 (1) of the Prevention of Terrorism (Temporary Provisions) Act appeared to permit preventive detention. Since Sri Lanka had not made any derogation with respect to article 9 (4), it therefore appeared that sections 10 and 11 (5) of the Prevention of Terrorism (Temporary Provisions) Act, which ruled out judicial control of preventive detention, were incompatible with the Covenant.

17. Article 15 of the Covenant prohibited the retroactive criminalization of acts. However, section 31 of the Prevention of Terrorism (Temporary Provisions) Act had provided for extensive retroactivity, in that the

(Mr. Lallah)

definition of an unlawful act included "any act committed prior to the date of the passing of this Act, which act would, if committed after such date, constitute an offence under this Act". In part I, listing the offences themselves, the term "unlawful activity" was not used, but it was used in part III, relating to administrative detention and investigation by the police. The main defect of part III was that it did not comply with article 9 (4). He wondered whether section 12 of the Act, which provided that any person who contravenes or acts in breach of any prohibition or restriction imposed on him by an order under section 11 would be guilty of an offence, was not a circuitous way of criminalizing acts committed before the coming into force of the Act. He would have wished to see judicial intervention in such matters, but that was not provided for.

18. Mr. SADI said that the comments made on the Prevention of Terrorism (Temporary Provisions) Act reflected the overwhelming view that it was in need of a serious overhaul. There were more provisions in the Act that were in contravention of the Covenant than were in conformity with it. In particular, the language of the Act was so vague as to invite abuse. Examples of such language were to be found in sections 2 (1) (h), 5, 9, and 16. The latter section in its entirety could not possibly be seen as being in conformity with the spirit or the letter of the Covenant. The Committee fully appreciated the magnitude of the terrorist problem which Sri Lanka faced but could not condone its going to such lengths to re-establish law and order.

19. Mr. de SILVA (Sri Lanka) said that the Prevention of Terrorism (Temporary Provisions) Act had to be read in the context of Sri Lanka's legal system as a whole. When viewed in the overall legal context, the Act would not be seen to be in need of an overhaul, as had been suggested.

20. With regard to the question of justiciability of an order under the Prevention of Terrorism (Temporary Provisions) Act, he conceded that section 11 (5) might appear vague to someone not aware that the Sri Lankan judicial system was controlled by the principles of administrative law. No ministerial order made without jurisdiction, or made unreasonably, or expressed too broadly, would be considered valid. Section 11 (5) existed only to protect valid orders, but no court had ever been deterred from examining an order merely because of the existence of such an exclusion clause. The courts would examine the reasonableness of the order itself. If a court found that an order was unreasonable, the order was not valid. An invalid order was not an order at all and hence was not protected by the exclusion clause.

21. Section 12 was not retroactively operative. If a person was under detention for conduct declared unlawful under the Act and violated the restricting order placed upon him, his offence was prospective and not retrospective.

(Mr. de Silva, Sri Lanka)

22. The phrase "connected with or concerned in" in section 11 (1) was understood in Sri Lanka in terms of the law of conspiracy, and would be clearly understood by any court there to mean "criminally connected with or concerned in". For example, the victim of a terrorist act was certainly connected with it, but that was not to say that he would therefore be subject to section 11 (1). As to the broad wording of the section, it had to be remembered that under Sri Lankan law the notion of an "accessory after the fact" as a person criminally liable did not exist.

23. The language used in section 2 (h) reflected proper legal drafting and was intended to cover the concept of slogans written down but not actually uttered in speech, or even non-verbal messages such as drawings.

24. With regard to the comments made on sections 16 and 18, he drew attention to section 16 (2), where reference was made to section 24 of the Evidence Ordinance, which provided that any statement made as a result of inducement, threat or promise to be irrelevant. If an accused or suspected person wished to plead that his statement had been made as a result of inducement, threat or promise, then that was a matter within the accused's own knowledge, and the burden was on him to provide evidence of it.

25. There was considerable jurisprudence on whether or not the confession of a co-accused should be taken into account. Under ordinary law in Sri Lanka, any confession implicating a co-accused could not be used against that co-accused. Given the nature of terrorist activity, however, and the difficulty of obtaining information other than from accomplices Parliament had enacted a law admitting such testimony, but placing upon the courts the duty of extreme vigilance to ensure that an accused was not merely trying to shift the blame onto his accomplices. With that safeguard, the statement of a co-accused could be used for the purposes of establishing an offence, but the evidential weight attached to it would be minimal.

26. Section 18 (2) was intended to deal with perjury. If a witness made two statements under oath which contradicted one another, it might not be possible to determine which was false, but evidently one of them had to be, and therefore perjury had evidently been committed.

27. The purpose of section 7 (3) (a) was to permit a form of interrogation known as confrontation. Individuals accused of involvement in the same offence would be detained and interrogated separately, and then questioned about any discrepancies between their stories. In order to bring them together for that purpose, it had to be possible to move them, but normally, a detained person could not be moved from his place of detention without a court order. Similarly, it was sometimes necessary to take detainees to the scene of an event about which they were being questioned to interrogate them on the spot about the practical details of what they claimed to have seen or done. Such movement, too, was covered by section 7 (3) (a), but the prisoner had to be accompanied by, and remained the responsibility of, representatives of the prisons department.

(Mr. de Silva, Sri Lanka)

28. He was aware that there had been allegations by lawyers that, following their appearance in certain cases, they had received threats. However, 95 per cent of the lawyers making such allegations had used them as a basis for an application to live in a different country. Such lawyers no longer being resident in Sri Lanka, their allegations could not be investigated. Where lawyers making such allegations remained in Sri Lanka, their allegations were always investigated, and if necessary, police protection was provided for them. Indeed lawyers had even been killed, and the reasons, and the identity of the perpetrators, had been investigated in every case.

29. He fully agreed that State terrorism was no remedy for terrorism. But the concept of State terrorism had to be clearly defined. There was a distinction to be made, for example, between an undemocratic Government keeping itself in power by force of arms, on the one hand, and a State using legitimate force to combat terrorism, on the other. Occasional excesses by members of the security forces did not amount to State terrorism unless the State had connived at or encouraged them. If members of the security forces went beyond their duties, they must be punished, but to single out three or four instances of abuse in the case of a country like Sri Lanka, which had 30,000 troops in the field against terrorism, and to call that State terrorism, was very unfair.

30. He agreed with Mrs. Higgins that some of the provisions of section 9 (3) of the Prevention of Terrorism (Temporary Provisions) Act entailed a derogation from article 9 (3) of the Covenant, but the Government had given due notice of that derogation. The Prevention of Terrorism Act remained an emergency provision, intended to be temporary, whose extension was subject to a review by Parliament. The Act was therefore permissible under article 4 (2) of the Covenant.

31. Mr. Dimitrijević (Vice-Chairman) took the Chair.

Right to a fair trial (articles 14 and 15 of the Covenant) (section VI of the list of issues)

32. The CHAIRMAN read out section VI of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) whether the independence and impartiality of the judiciary, was guaranteed through, in particular, legal and administrative provisions governing tenure, dismissal and disciplining of members of the judiciary; (b) whether there was a free legal aid and advisory scheme and how it operated; (c) information concerning the organization and functioning of the Bar in Sri Lanka; and (d) whether the possible conflict relating to the retroactivity of laws between articles 15 (1) and 13 (6) of the Constitution had been referred to the Law Commission and, if so, what its findings had been.

33. Mr. de SILVA (Sri Lanka), referring to section VI (a), said that articles 107 to 110 of the Sri Lankan Constitution provided adequate safeguards for the independence of the judiciary. Those articles fixed salaries and tenure, and insulated appointments and tenure from interference by the executive branch. Disciplinary control was not the province of the executive branch, but rather of an independent Judicial Service Commission composed of the Chief Justice and two Supreme Court judges. The judiciary was controlled by the Superior Courts, which were entrenched under the new Constitution. They could not be arbitrarily abolished and judges could be removed only under the procedures set forth in article 107 (2) and (3) of the Constitution. Moreover, interfering with the independence of the judiciary was an offence.

34. Referring to section VI (b), he described the legal aid scheme administered by the Bar Association of Sri Lanka, an independent organization of attorneys at law. The free legal aid scheme was funded by the State, and by the Asia Foundation and other foreign donors. Even so, its operation was hampered by financial constraints.

35. Legal aid scheme centres operating throughout the country assigned attorneys to advise litigants or appear in court on their behalf. Recently, members of the Bar Association of Sri Lanka, through the free legal aid scheme, had intervened in the majority of the fundamental rights and habeas corpus cases. The new President of the Bar Association had also proposed that its members should appear in at least three court cases every year, free of charge. In cases where persons were tried on indictment or for appeals of trials on indictment, counsel was assigned at the State's expense to defendants requiring assistance.

36. Referring to section VI (c), he said that the Bar Association of Sri Lanka, an independent body of attorneys at law, had branches throughout the country, and that its officers were elected. It maintained a dialogue with the Ministry of Justice on the administration of justice and expressed its views on legal issues of national importance. On numerous occasions, the Bar Association had agitated for its demands, and, as a result, engaged in dialogue with the executive, in order to obtain satisfaction.

37. Referring to section VI (d), he said that article 15 of the Constitution had been considered in the light of article 4 (2) of the Covenant at the All-Party Conference. Article 13 (6) provided for retroactivity where an act would have been considered criminal under the laws of civilized nations. In the case of terrorist activity, for example, recent experience had shown that conduct which was harmless under ordinary circumstances might well constitute a threat in time of emergency. Retroactivity made it possible to apprehend and punish perpetrators and thereby served as a deterrent. The policy had evolved in late 1989, in the wake of repeated terrorist violence aimed at paralysing certain services. In that terrorist campaign, seemingly innocent acts - a mark on a wall or a red handkerchief left at a doorstep - had actually been a means of communicating death threats. The Government was

(Mr. de Silva, Sri Lanka)

aware of the highly sensitive nature of the retroactivity provision and applied it with extreme caution.

Freedom of movement and expulsion of aliens (articles 12 and 13 of the Covenant) (section VII of the list of issues)

38. The CHAIRMAN read out section VII of the list of issues concerning the second periodic report of Sri Lanka, namely: the legal prohibitions governing the expulsion of aliens, and whether an appeal against an expulsion order had suspensive effect.

39. Mr. de SILVA (Sri Lanka) drew the Committee's attention to the information given on page 24 of the document submitted by his delegation in response to the list of issues.

Right to privacy (article 17 of the Covenant) (section VIII of the list of issues)

40. The CHAIRMAN read out section VIII of the list of issues, namely: information concerning the law and practice relating to permissible interference with the right to privacy.

41. Mr. de SILVA (Sri Lanka) drew attention to page 24 of the written replies provided to the Committee. Sri Lanka had no specific law which embodied the provisions of article 17 of the Covenant, but it did have laws on defamation, secrecy of declarations for inland revenue and similar measures to protect privacy. As it moved towards the computerization of records and documents, Sri Lanka was studying laws on data protection in the United Kingdom and other countries. The right to privacy was also covered by the proposed Seventeenth Amendment to the Constitution and by ordinary domestic legislation.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred (articles 18, 19 and 20 of the Covenant) (section IX of the list of issues)

42. The CHAIRMAN read out section IX of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) whether Buddhism enjoyed privileged treatment compared to other religious denominations; and (b) the legal regime under which the press and the mass media operated in Sri Lanka, and the controls exercised on the freedom of the press and the mass media under Sri Lankan law.

43. Mr. de SILVA (Sri Lanka), referring to section IX, drew the Committee's attention to page 25 of his delegation's written replies and said that freedom to manifest one's religion was guaranteed by the Constitution. The Constitution also sought to avoid religious conflict by stipulating that different religions must establish their places of worship and engage in other manifestations of religion at a certain distance from each other. There was

(Mr. de Silva, Sri Lanka)

no official State religion, nor any compulsory adherence to a particular religion. The Constitution did provide for the primacy of Buddhism, meaning, in practice, that when State functions were opened by religious ceremonies, Buddhist rituals were performed first.

44. Referring to section IX (b), he drew attention to page 25 of his delegation's written replies. The Sri Lankan Constitution guaranteed freedom of speech and a Press Council supervised press activities, on the premise that peer supervision was preferable to governmental control. News coverage of terrorist acts was restricted only if it was liable to trigger a strong backlash, and, even in those cases, the decision was taken by the Press Council, not the Government.

Freedom of assembly and association (articles 21 and 22 of the Covenant) (section X of the list of issues)

45. The CHAIRMAN read out section X of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) information about the number, membership, organization and effectiveness of trade unions in Sri Lanka; (b) a description of the relevant laws and practices relating to the establishment of political parties and concerning public meetings; and (c) the impact if any, of the lengthy period of the state of emergency on the exercise of the right to freedom of assembly and association.

46. Mr. de SILVA (Sri Lanka), referring to sections X (a) and X (b), drew the Committee's attention to pages 25 and 26 of his delegation's written replies.

47. Referring to section X (c), he said that, recently, Provincial Council, Presidential and Parliamentary elections had been held throughout the country and that, except in certain parts of the north and east, local authority elections would be held in May 1991. Emergency regulations were temporarily suspended whenever the Commission of Elections found that they hindered the election process.

Protection of the family and children (articles 23 and 24 of the Covenant) (section XI of the list of issues)

48. The CHAIRMAN read out section XI of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) information on the law and practice relating to the employment of minors; (b) illustrations of the activities undertaken by the Presidential Commission on Youth Unrest; (c) whether children born out of wedlock had the same rights as children born in wedlock; (d) whether the Children's Charter mentioned during consideration of the initial report had been adopted and, if so, relevant details concerning its impact on the enjoyment of the rights of the child under the Covenant.

49. Mr. de SILVA (Sri Lanka), referring to sections XI (a) and (b), drew attention to page 27 of his delegation's written replies. Referring to section XI (c), he stressed that legitimate children took the father's nationality. He believed that to be the practice in most other jurisdictions as well.

50. Referring to section XI (d), he said that the Children's Charter had indeed been signed, and that Sri Lanka was studying the World Declaration on the Survival, Protection and Development of Children and the Plan of Action.

Right to participate in the conduct of public affairs (article 25 of the Covenant) (section XII of the list of issues)

51. The CHAIRMAN read out section XII of the list of issues concerning the second periodic report of Sri Lanka, namely: equitable access to public service by members of minority groups and persons holding differing political opinions.

52. Mr. de SILVA (Sri Lanka) said that there were no restrictions on citizens seeking public employment, but that ethnic recruitment quotas had been introduced at both the national and provincial levels. Those measures had been challenged and the matter was currently before the Supreme Court. He expected them to be adopted as law in the near future.

Rights of persons belonging to minorities (article 27 of the Covenant) (section XIII of the list of issues)

53. The CHAIRMAN read out section XIII of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) measures taken to guarantee the rights of ethnic and religious minority groups and the assistance given to them to preserve their cultural identities, languages and religions; and (b) the representation of minority groups in Parliament and the Provincial Councils.

54. Mr. de SILVA (Sri Lanka) drew the Committee's attention to page 28 of his delegation's written replies. Referring to section XIII (b), he said that minorities were adequately represented in Parliament.

55. Mr. WENNERGREN referred to the first paragraph of the Sri Lankan delegation's written reply on the right to privacy. He wondered whether Sri Lankan legislation also afforded protection against hidden microphones, optical devices, and other forms of electronic surveillance which countries often used to investigate espionage.

56. Referring to section X (c), he wondered, in the light of Sri Lanka's recent difficulties, whether it had been possible to exercise the right of freedom of assembly, to what extent and under which circumstances.

(Mr. Wennergren)

57. He wished to know whether article 14 (a) of the proposed Seventeenth Amendment to the Constitution protected the freedom to seek information - a right specifically guaranteed by article 19 of the Covenant. Some indication should be given as to whether citizens and the press would have access to government information in an open society, or whether such access would be restricted by a public information law or official secrets law.

58. Mr. SADI asked whether specific practical measures had been taken in order to achieve harmony among the country's major religious groups. He wished to know whether Sri Lanka had ratified the United Nations Convention on the Rights of the Child and, referring to section XI (c), whether children born out of wedlock enjoyed the same rights as children born in wedlock.

59. Mr. ANDO referred to the right to freedom of expression and asked whether foreign journalists were subject to the same restrictions as Sri Lankan journalists in covering ethnic conflicts. That was particularly relevant in view of Mr. de Silva's remarks on the control of news reports liable to provoke a widespread backlash.

60. He inquired about regulations, and in particular, restrictions on the production and release of programmes on State-run television. He asked whether the Government had any plans to promote private ownership of television broadcasting facilities.

61. The Official Secrets Act differed from the British act in its broad definition of "official secrets". Since, under the Sri Lankan Act, any secret information made public without proper authorization was presumed harmful to State interests, he would appreciate clarification as to who bore the burden of proof.

62. Noting certain anti-union activities by employers, he asked whether Sri Lankan law prohibited discrimination in hiring and promotion and prescribed civil remedies in the event of violations.

63. Mr. MYULLERSON requested additional information on article 13 (5) of the proposed Seventeenth Amendment to the Constitution. It was not clear that that article was entirely consistent with article 14 of the Covenant on the presumption of innocence. Specifically, he wished to know more about the "facts" referred to in the article. He, too, would appreciate more information on the State monopoly of the mass media. He wondered who owned and controlled the media. It would be interesting to know whether programmes were aired in the various national languages, or even in minority languages which were not official languages under the Constitution. Lastly, the Sri Lankan delegation should provide information on any cases in which the publication of newspapers had been banned.

64. Mr. de SILVA (Sri Lanka) said that there was no State control of the mass media. One national newspaper was owned by the State; the rest by private parties. There were only two television stations; one had always been owned by the State, and the second had had to be sold to the State because its owners could not afford to keep it going. A private company had applied to set up a television station, but had not yet found the finance required. Broadcasting was in English, Sinhala and Tamil, because all citizens of Sri Lanka would understand at least one of those languages. There were more programmes in English than were justified by the proportion of the population speaking English, because programmes were bought and there were not sufficient funds to dub all of them. There was no prohibition on receiving broadcasts from other sources, and some people possessed satellite dishes.

65. The principles of the Official Secrets Act were based on British law and intended to operate in much the same way.

66. Turning to the question of any shifting of the burden of proof, he said that there had been no change in the presumption of innocence. It remained incumbent upon the prosecution to establish guilt beyond reasonable doubt, but when the accused had special knowledge of facts but did not plead it he was presumed not to possess it, so the burden of establishing, for example, that he had acted while of unsound mind or as a result of provocation rested with the accused, who needed only to establish a balance of probability.

67. No distinction was made in Sri Lanka between foreign and local journalists, and no restrictions were placed upon the activities of the former if they entered Sri Lanka declaring themselves to be journalists, rather than pretending to be tourists.

68. Except under temporary emergency legislation, trade union activity was not restricted outside the free trade zone, where foreign companies which had opened factories had secured special non-trade union terms on the grounds that the wages they paid were higher than elsewhere. Outside the free trade zone a person could go to court in defence of his right to engage in trade union activity.

69. The only difference in treatment between children born in and out of wedlock was that if a child born out of wedlock wanted to claim a share of his father's property he had to establish paternity; in the case of a child born in wedlock, paternity was presumed.

70. No affirmative action was taken by the State on behalf of religious amity because it would be regarded by some as interference in their religious rights. However, it was undertaken by private organizations with State support. As for the right to information, the Government of Sri Lanka had decided that it could be provided subject to the interests of privacy, State privilege or official secrets.

(Mr. de Silva, Sri Lanka)

71. In answer to the question concerning electronic surveillance, he stated that when the laws of Sri Lanka were drafted the only available method of surveillance was telephone tapping. The country was too poor to afford more sophisticated devices, and probably did not have enough secrets to justify the use of such equipment anyway, but it would certainly be illegal to operate the more modern surveillance devices to which the question had referred. The Government of Sri Lanka was, in any event, aware of the need to update its legislation to cover data protection.

72. As for the right of assembly, country-wide elections had recently been held with total freedom of assembly. Only during the height of the emergency had there been restrictions, and they had since been removed.

73. Mr. Pocar resumed the Chair.

74. Mr. ANDO said that the difficult conditions which Sri Lanka was facing made it harder to protect human rights, but efforts had to be made to comply with the provisions of the Covenant. Some provisions of the proposed Seventeenth Amendment to the Constitution complied with the provisions of the Covenant, while others, such as the grounds of discrimination, were not quite the same; there were grounds that were not in the Covenant, and some of the grounds in the Covenant had no equivalent in the Seventeenth Amendment. An adjustment had to be made. Mr. de Silva had said that the retroactive application of the criminal law had been necessary because of its deterrent value, but deterrence would also be achieved by an improved police system and better education and social services. The protection of human rights required good social and economic conditions, and to achieve those, both order and security were needed. In future, reports should be more substantial in order to permit a fuller and more sustained dialogue.

75. Mr. EL-SHAFEI said that although the report had been short, the delegation's answers to the oral questions had given him a better understanding of the constitutional and legal framework in which human rights were protected in Sri Lanka. However, the Sri Lankan Constitution referred only to certain treaties, and maintained silence with respect to the Covenant. Several of the provisions in the Constitution and in the proposed Seventeenth Amendment were based on articles of the Covenant but some rights appeared in a more limited form than in the Covenant itself, and in some instances the restrictions could lead to a derogation of rights which under the Covenant were non-derogable in any circumstances. Sri Lanka was experiencing difficulties, and the Government had taken measures to ensure the safety of the population against organized acts of violence, but there were gross and widespread violations of human rights in the course of dealing with violent opposition to the Government, such as extrajudicial executions, disappearances, torture, and the fact that thousands of political prisoners were still detained without trial. Changes in the Constitution were not likely in themselves to ensure that such violations would not continue, and the Government of Sri Lanka must ensure that all safeguards against abuses

(Mr. El-Shafei)

were rigorously enforced, by accounting for the violations committed thus far, compensating relatives and ensuring that those who were responsible were brought to justice. Finally, he wished to associate himself with the views expressed by other members of the Committee with regard to the Prevention of Terrorism (Temporary Provisions) Act.

76. Mr. MYULLERSON said that although the report had revealed almost nothing of the situation in Sri Lanka with regard to civil and political rights, he now had a much better understanding of the position. The main difficulty with regard to human rights arose because of the existence of the emergency, and his principal concern was the use of excessive force by the police and the armed forces. Firearms obviously had to be used to fight terrorists, but he had certain misgivings that even when disappearances were not caused by forces acting on behalf of the Government, they were condoned by them. However, the fact that the Government of Sri Lanka was cooperating with the United Nations Working Group on Enforced or Involuntary Disappearances was a welcome indication that it understood the problem and was trying to deal with it. It seemed to be the unanimous opinion of members of the Committee that the Government of Sri Lanka should reconsider the proposed Seventeenth Amendment to the Constitution in the light of the Covenant, and in particular to make sure that it contained only those restrictions and derogations that were allowed under the Covenant.

77. Mr. MAVROMMATIS said that despite the shortcomings of the report the Committee had an interesting and fruitful dialogue with the delegation, and fully understood and sympathized with the situation the Government of Sri Lanka was dealing with. Terrorism and attempts at secession were tearing the country apart, but there was a need for continuing vigilance to ensure that efforts to combat those forces did not involve the commission of excesses and that any complaints were promptly and efficiently investigated. The best way to achieve that was through the courts. He urged the Government of Sri Lanka to use the Covenant as a model for its proposed Seventeenth Amendment, and to expand upon it. If the emergency was to continue, further consideration should be given to the derogations involved in the relevant legislation.

78. Mr. HERNDL said that although the proposed Seventeenth Amendment to the Constitution was partly modelled on the Covenant, special care should be taken to bring its provisions into line with those of the Covenant, especially with regard to equality, and in respect of article 12 he regretted the removal of the word "race". He noted that the proposed constitutional amendment would improve remedies, but said special attention should be given to any restrictions on non-derogable rights. The Prevention of Terrorism (Temporary Provisions) Act should also be re-examined in the light of excessive use of force by members of the security forces.

The meeting rose at 1 p.m.

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1060th MEETING

Held at Headquarters, New York,
on Wednesday, 10 April 1991, at 3 p.m.

Chairman: Mr. POCAR

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1060/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Sri Lanka (continued) (CCPR/C/42/Add.9)

1. At the invitation of the Chairman, Mr. de Silva (Sri Lanka) took a place at the Committee table.

2. The CHAIRMAN said that the Committee would continue its general observations on the second periodic report of Sri Lanka.

3. Ms. CHANET said that the second periodic report of Sri Lanka had not been prepared in accordance with the Committee's guidelines and did not contain the information requested by the Committee. Mr. de Silva did not seem to be entirely in agreement with the information supplied by Amnesty International. However, much of that information had been corroborated by reliable sources. A State governed by rule of law should have the necessary means to control, prevent and punish such offences within the scope of its domestic legislation and with due respect for its international commitments.

4. She associated herself with the comments made by other members of the Committee regarding the seventeenth amendment to the Constitution. The Government should not confuse a derogation from certain rights with restrictions on those rights. Article 4 of the Convention set forth the exceptional situations in which a State party could avail itself of the right of derogation. The Sri Lankan Government should be aware that such derogations could not become a permanent feature of the Constitution.

5. She shared the concerns of other Committee members regarding the retroactive nature of certain laws. The interpretation of terrorism as contained in the Prevention of Terrorism (Temporary Provisions) Act appeared to be much too broad, and the Act contained no provision for recourse to an impartial and independent court.

6. Mrs. HIGGINS said that the proposed seventeenth amendment to the Sri Lankan Constitution contained many useful provisions which would bring the Constitution into greater conformity with the Covenant. She hoped that, when Sri Lanka withdrew its derogation to article 9 (3) of the Covenant, her comments on the subject might prove useful. She encouraged the Government of Sri Lanka to take due account of the Committee's views on the derogations clause of the seventeenth amendment when considering how that clause might be reworded. She remained concerned about the efficacy of habeas corpus, since that right seemed to be unavailable in Sri Lanka.

7. Mr. de Silva's attitude towards preventive detention seemed to be that it was understandable that the State should take individuals into custody in

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order to prevent them from engaging in terrorist acts. Such measures were incompatible with the Covenant. In cases where the State had bona fide concerns about the potential criminal behaviour of certain individuals, it should make use of such court-authorized procedures as surveillance and wire-tapping; it should not, however, take the heavy-handed approach of removing people from circulation for up to 18 months at a time. Finally, the State should endeavour to ensure that offences committed by the armed forces and the police were dealt with speedily.

8. Mr. LALLAH said that it might be useful to make the Covenant better known to law officers and people in the legal profession Sri Lanka. He suggested that Sri Lanka should take great care to formulate its next report in accordance with the Committee's guidelines and that it should indicate specifically what rights had been derogated from and what particular rights it was normally permissible to limit; in addition, it should comment on such derogations and limitations in the light of the provisions of the Covenant.

9. It was essential that Sri Lanka should deal with the prevailing situation of national strife within the framework of the Covenant. The Government should endeavour to achieve a degree of national unity which would lead to the repeal of its emergency provisions. He agreed with other members of the Committee that the proposed seventeenth amendment to the Constitution should be brought into line with the provisions of the Covenant.

10. Mr. PRADO VALLEJO said that the Sri Lankan Government could overcome the problems besetting the country by enacting legislation which was in harmony with the Covenant. He was concerned that the remedy of habeas corpus was, for all intents and purposes, unavailable in Sri Lanka, and he encouraged Sri Lanka to implement its domestic legislation in that area.

11. Sri Lanka appeared to be having difficulty guaranteeing the right to life. Unfortunately, the authorities did not seem to be conducting investigations of deaths and disappearances as expeditiously as they should. Moreover, no effort had been made to provide effective compensation to victims or their families; in that regard, the Sri Lankan Government had the duty to take measures to mitigate the hardship which had been caused by the presence of Indian troops in Sri Lanka.

12. Under section 9 of the Prevention of Terrorism (Temporary Provisions) Act, the Minister was empowered to issue detention orders which could be extended for a period of up to 18 months; that discretionary power was open to abuse. Finally, he observed that freedom of information did not seem to be guaranteed in Sri Lanka, and he referred to reported cases of deaths in the Sri Lankan Broadcasting Corporation.

13. The CHAIRMAN, speaking in his personal capacity, said that, although the second periodic report of Sri Lanka was short and had not been prepared in accordance with the Committee's guidelines, the discussion of the report had

(The Chairman)

been fruitful, largely because of the competence of the Sri Lankan delegation. He hoped that, in revising its legislation, Sri Lanka would take account of the observations which had been made by members of the Committee.

14. Mr. de SILVA (Sri Lanka) thanked the Committee for its detailed examination of Sri Lanka's second periodic report and for having given him the opportunity to respond to allegations from various sources. He believed that there had been a slight misunderstanding regarding his statement on preventive detention. Under Sri Lankan law, preventive detention was authorized only in exceptional situations, and he had by no means wished to imply that preventive detention was a permanent feature of everyday life in Sri Lanka.

15. Mr. de Silva (Sri Lanka) withdrew.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Draft general comment on article 10 of the Covenant (continued)
(CCPR/C/41/CRP.1)

16. The CHAIRMAN recalled that, at the 1056th meeting of the Committee, Ms. Chanet had introduced the draft general comment on article 10 of the Covenant (see CCPR/C/SR.1056/Add.1), and he invited the members of the Committee to make observations on the general comment.

17. Mr. EL-SHAFEI said that, in the fourth line of paragraph 3 of the English text, the words "under the same conditions" should be deleted since no conditions should be imposed on respect for the dignity and integrity of detained persons. In its examination of a communication during its current session, the Committee had enlarged its understanding of article 10 of the Covenant by stipulating certain requirements which would ensure respect for detained persons, such as the provision of adequate medical care and basic sanitary facilities to detainees during their period of detention. It might be helpful to States parties if the Committee made some reference to such requirements in its general comment. One or two sentences on the subject could be inserted in paragraph 3 or in a subsequent paragraph.

18. Mr. ANDO said that the general comment should make some mention of the plight of juveniles in custody and of persons detained in mental hospitals, since their human rights were also frequently abused.

19. Mr. SADI said that greater emphasis should be placed on contact with the family, especially if the detained person was the provider, and on the need to protect detainees from medical experimentation.

20. A further point to be highlighted was that in many countries no provision was made for regular inspection of prison conditions by representatives of the civil administration.

21. Mr. LALLAH said that the purpose of the general comments was to codify the Committee's collective views on the experience it had gained from the cases brought to its notice. The comments were taken seriously by the States parties themselves and were carefully scrutinized in the law faculties of universities.

22. He had not had the opportunity to compare the draft text submitted by the Chairman of the Working Group with that of previous general comments on article 10. However, he had the impression that there was a need for more extended comment, particularly with regard to paragraph 3 of the article.

23. Mr. MAVROMMATIS said that paragraph 4 of the general comment should be redrafted in order to make it clear that the provisions of article 10 became operative when a person was arrested or taken into custody, that being the effective moment at which he or she was deprived of liberty.

24. The text should also specify the scope of the term "juvenile offenders" in paragraph 18, and the time-limit for examination of cases involving such offenders, since that was left unclear in paragraph 13 of the draft text.

25. Mrs. HIGGINS said that States parties had not challenged the competence of the Committee to make general comments, which they found useful in preparing their reports. The comments served a further purpose by reminding the Committee of its position on a given issue and by contributing to the emergence of new international norms.

26. In her view, the text of the general comment under consideration should begin with a clearer explanation of the difference between articles 7 and 10 of the Covenant, which was that the former dealt with certain very grave and unacceptable violations of human rights, irrespective of whether the person affected was or was not deprived of liberty, while the latter defined more specific requirements within the context of deprivation of liberty.

27. The reference in paragraph 5 to "persons ... lawfully being held against their will" could be misleading, since it was presumably not true that article 10 would not apply if a person was unlawfully deprived of liberty. As currently worded, paragraph 5 seemed to imply that only persons lawfully deprived of liberty were covered by the provisions of article 10. It might therefore be appropriate to amend the paragraph to refer to all persons deprived of their liberty, including those lawfully held against their will. The proviso in paragraph 9 "While it is conceivable that conditions of detention may vary according to available resources ..." caused her some misgivings, for although it might indeed reflect reality, if might be taken to imply that the applicability of article 10 was dependent on the availability of resources.

28. In paragraph 10 she proposed the insertion after "article 10 (1)" of the words "as well as constituting an obligation by themselves, also constitute the basis for ...". The rest of the paragraph would remain unchanged.

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29. Paragraph 12 stated that failure to comply with the provision in article 10 (2) (b) could not be justified by any consideration whatsoever. She considered that such a strong affirmation was unduly peremptory, and that the paragraph should be reworded accordingly.

30. Mr. WENNERGREN said that it might prove difficult to extend the field of application of article 10 to cover persons "voluntarily" deprived of liberty, such as those who of their own free will committed themselves to a mental hospital: in what circumstances could deprivation of liberty be described as voluntary?

31. He suggested that it would be appropriate to make some mention in the draft general comment - perhaps in paragraph 2 - of the need for protection of persons against medical experimentation, and also, in paragraph 3, against compulsory social rehabilitation programmes and psychotherapy. In the latter paragraph, the words "respect for human dignity" should be followed by "in harmony with what is guaranteed for free persons", since conditions in a closed environment could never be the same as those enjoyed by a free person. He would submit a written amendment to paragraph 3 in due course.

32. In connection with paragraph 11, he pointed out that the presumption of innocence applied when an individual appeared before a court, but was scarcely relevant to remand in custody. The need to segregate accused persons from convicted persons could be expressed without reference to the concept of presumption of innocence. Paragraphs 12 and 18 both dealt with juveniles, and could usefully be combined.

33. In regard to paragraph 14, he said that it was perhaps too optimistic to suggest that the penitentiary system could "ensure" that the offender would wish to live within the law after release, and the paragraph should be reworded to reflect a more modest aspiration. In paragraph 16, mention should also be made of contact with friends, in addition to the family, lawyers and social services.

34. In conclusion, he said that paragraph 17 did not take into account the fact that some prisoners serving life sentences would never be released and could thus not be regarded as open to social rehabilitation.

35. Mr. WENNERGREN, referring to paragraph 17, said that it was necessary to be realistic and to recognize that some prisoners who were serving life sentences in lieu of receiving the death penalty would never be rehabilitated.

36. Mr. HERNDL said that, he had difficulty with paragraphs 4 and 5 of the document, which spoke of persons who were lawfully held against their will; those paragraphs should be reworded to include cases of unlawful detention as well. He suggested that the first clause of the first sentence of paragraph 8 should be amended to read "The Committee notes that there is a need for the applicable provisions to be brought to the attention of the personnel who have

authority over detained persons ..." and that the remainder of the sentence should be adjusted accordingly. In paragraph 11, he suggested replacing the word "must" in line 6 with "should".

37. In addition, he suggested that paragraph 17 should be placed immediately after paragraph 14, and that the last sentence of paragraph 16 should become the last sentence of paragraph 14.

38. With regard to Mr. Wennergren's comment concerning the phrase "to ensure" in paragraph 14, he felt that was what involved was probably an error in the English translation.

39. Mr. MYULLERSON said that the last sentence of paragraph 3 would probably be unacceptable to most States, since certain rights, such as the right to participate in elections, were normally denied to prisoners.

40. He agreed that paragraphs 4 and 5 should apply also to persons who were unlawfully detained. However, the phrase "held against their will" raised complex issues, as persons were frequently interned voluntarily in mental hospitals and could not be said to be deprived of their liberty.

41. He agreed with Mr. Wennergren that paragraphs 12 and 18 dealt with the same subject and should be placed together. The main point was to make it clear that the treatment accorded to juveniles should be different from that accorded to adults.

42. Mr. PRADO VALLEJO said that in the Spanish version of paragraph 6, the words "whether they are complying" should be rendered as "si se cumplen".

43. With regard to the rights of persons in detention, he noted that, in the case of Panama, 80 per cent of its prison population consisted of persons who had already served their sentences. What was happening in Panama was also happening in other countries. The draft general comment on article 10 should state that once a person had completed his sentence, he should be released immediately, and States parties should inform the Committee of what steps they had taken to comply with that provision. Furthermore, information concerning the United Nations Standard Minimum Rules for the Treatment of Prisoners should not be restricted to prison officials, but should also be furnished to prisoners, so that they might become acquainted with their rights. Of equal concern was the situation in Ecuador, where no records were kept to indicate that persons had been incarcerated, so that prisoners' whereabouts were often unknown. States parties had an obligation to ensure that the proper procedures were carried out.

44. The CHAIRMAN said that the Committee had concluded its initial consideration of the draft general comment regarding article 10 of the Covenant.

The public meeting rose at 4.50 p.m.